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ABSTRACT

A checklist has been developed as a reference to the basic issues which should be covered in contracts for lease or purchase of computer software and custom software packages. The terms have been selected from contracts used by colleges, universities, and the General Services Administration of the U.S. Government governing the lease and purchase of software. The categories of terms and clauses are listed in alphabetical order. Sample clauses have been selected for inclusion in the text on the basis of brevity, clarity, and benefit to the customer. (KKC)

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CONTRACTING FOR COMPUTING

VOLUME II

A CHECKLIST OF TERMS AND CLAUSES FOR USE IN CONTRACTING WITH VENDORS FOR: SOFTWARE PACKAGES AND CUSTOM SOFTWARE

EDUCOM
INTERUNIVERSITY COMMUNICATIONS COUNCIL, INC.
P.O. Box 364
Princeton, New Jersey 08540

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CONTRACTING FOR COMPUTING

VOLUME II

JANUARY 1975

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Part 2: Custom Software

CONTRACTING FOR COMPUTING SOFTWARE

INTRODUCTION

This checklist is intended to be a reference of the basic issues which ought to be covered in contracts for lease or purchase of software packages by colleges and universities from commercial vendors or other institutions. The terms have been selected from contracts governing the lease and purchase of software which have been used by colleges and universities in the U.S. and Canada, and by the General Services Administration of the U. S. Government.

The categories of terms and clauses, listed in alphabetical order, represent areas which ought to be covered in any contract. For some categories, no sample clauses have been included because none have been submitted for consideration. Nevertheless, each category is considered important for a strong contract.

Particularly for delivery and installation, it is useful to include a remedy or penalty in a contract in order to encourage the lessor or vendor to meet deadlines and specifications. A remedy is defined here as an action which insures that the specifications outlined in a provision of the contract are met. Remedies usually require provision of substitute services by the lessor or vendor and require that the vendor bear the cost of any special arrangements which are needed to meet the originally stated objectives. Penalties require additional damages usually in the form of fines. Sample clauses for remedies and penalties are included in the checklist only for sections of the contract where they have been found most useful by the contributing institutions. It is possible, however, to include remedies and penalties in almost any section of the contract.

Before drawing up a contract for lease or purchase of software, an administrator together with appropriate users, should prepare a detailed list of specifications for the desired software package (see Appendix c). Once the specifications are set, including required standards of performance, a request for bid and lease or purchase agreement can be drawn up.

At this point, the checklist should be useful to the administrator as a reference to wording and arrangements which have been used by other institutions. It can also serve as a source of some standard clauses especially regarding liability, termination, and taxes which might otherwise be overlooked.

The draft agreement should then be modified and developed in consultation with a lawyer.

This checklist may be especially helpful to individuals from smaller schools, or independent schools, which are not part of a larger system. Experience has shown that large vendors have not given concessions on lease and purchase contracts for software or for equipment except in the case of large systems like the California State University, or the General Services Administration of the Federal Government. Although many software vendors have company contracts for lease or purchase agreement, they will often accept an addendum to the agreement in which several of the safeguards identified in this volume can be included.

A good contract requires the addition of particular terms and conditions which reflect special requirements of the institution. In addition, all contracts should be reviewed by counsel to insure that they meet special requirements of the state and other jurisdictions. Although the sample terms and

clauses may provide ideas for specific benefits, remedies and penalties, it is not intent of the authors to offer the descriptions or examples as substitutes for competent legal advice.

James Poage
Princeton University

Carolyn Landis
EDUCOM

January 1975

HOW TO USE THE CHECKLIST

The checklist is organized as a reference for administrators and faculty at colleges and universities who are responsible for leasing or buying computing software. Types of clauses are listed in alphabetical order. The order in which they should appear in a contract is a matter of individual choice.

For both Part 1 and Part 2 of this volume, the checklist identifies each category for which sample clauses have been gathered, and an asterisk in the appropriate place on the grid to the right of the checklist indicates where sample provisions, remedies or penalties appear. Any "sample" clause which appears in the text is repeated in the appendix. "Additional" clauses which illustrate some types of clauses are included in the appendix but not in the text. Sample clauses have been selected for inclusion in the text on the basis of

- brevity
- clarity
- benefit to the customer

In the text portion of the checklist, a brief description for each category of clause points out the reasons for including that type of clause in a contract and notes some of the conditions under which the term or clause is usually necessary. Sample terms following each discussion portion of the text clarify the intent of the type of clause described and illustrate specific requirements and remedies or penalties. All examples are contract terms and clauses which have been used by colleges, universities, and the Federal government.

For each sample clause in the text and for other examples in the appendix, the category of clause is noted by number and by name above the clause. The vendor, customer, and year of the

agreement are noted below the clause. An explanation of the purpose and parties to each source agreement appears in Appendix b on page 2.

Appendix c is an outline of the type of items which ought to be included in software specifications which was submitted by the University of Michigan.

Appendix d and e relate to *Part 2: Custom Software*. Additional example clauses appear in Appendix d and sources of clauses for *Part 2* are identified in Appendix e.

Part 1: Software Packages

CONTRACTING FOR COMPUTING SOFTWARE

PART 1: SOFTWARE PACKAGES

	TEXT			APPENDIX (a)		
	Prov.	Remedy	Penalty	Prov.	Remedy	Penalty
I. GENERAL CONTRACTOR COMMITMENTS						
1. Scope of Contract Commitments	X			X		
2. Other Applicable Laws	X			X		
3. Modification of Agreement	X					
4. Term of Contract	X			X		
I. DELIVERY AND INSTALLATION						
1. Delivery Dates	X	X	X			
2. Installation		X	X		X	X
3. Risk of Loss or Damage	X			X		
4. Acceptance Procedure	X			X		
5. Storage Media	X			X		
I. TERMS OF USE						
1. Alterations in Software						
a) modifications by user	X			X		
b) modifications by vendor (see maintenance update)	X					
2. Assignable Rights						
a) limitation of	X			X		
b) assignment agreement	X			X		
3. Cancellation of Agreement	X			X		
4. Copying						
a) limitation of copying	X			X		
b) copyright	X			X		

	TEXT			APPENDIX (a)		
	Prov.	Remedy	Penalty	Prov.	Remedy	Penalty
c) transfer of copies to new location (see also emergency transfer)						
5. Discontinuance of Use	X			X		
6. Documentation	X			X		
7. Emergency Transfer of Use (see also copying)	X			X		
8. Liability	X			X		
9. Licenses	X			X		
a) general	X			X		
b) redesignation of CPU	X			X		
c) optional materials	X			X		
d) term	X			X		
10. Maintenance	X			X	X	
a) emergency	X			X		
b) updating and continuing (see also modification)	X					
c) reporting procedures, errors	X					
11. Online Access	X			X		
12. Patent and Copyright Indemnity	X					
a) general	X			X		
b) limitations of	X			X		
13. Payment Procedures	X			X		
14. Prices	X			X		
a) benefit of reduction	X			X		
b) change	X			X		
c) of emergency services	X					
d) of maintenance	X			X		
e) of additional options/ related material	X			X		
f) royalties for third party use or sale				X		
g) storage media						

	TEXT			APPENDIX (a)		
	Prov.	Remedy	Penalty	Prov.	Remedy	Penalty
15. Protection and Security						
a) accounting records required	X					
b) cf software	X			X		
16. Standards of Performance	X					
17. Taxes	X			X		
18. Technical Services	X			X		
19. Title	X					
20. Training	X					
21. Transfer of Use	(see redesignation of CPU and emergency transfer of use)					
22. Warranty	X			X		

I. GENERAL CONTRACTOR COMMITMENTS

This portion of the contract outlines in general terms the items about which the agreement is being made, the conditions under which the agreement is being made, and the length of time the contract is expected to be in effect. It is similar to the abstract portion of a proposal or a statement of purpose which would accompany a project report.

I.1. SCOPE OF CONTRACT COMMITMENTS

Terms which outline the scope of contractor commitments often include a description of the software package and related documents by title and general capability. Reference should also be made here to commitments made by the contractors but not wholly incorporated in other portions of the agreement such as: the attachment of other documents, and limitation of provisions or remedies to terms included in the contract and attachments.

SAMPLE PROVISION

Scope of Contract Commitments I - 1

The Regents of the University of California (University and International Business Machines Corporation (IBM) agree that the following terms and conditions shall govern all cases when the University leases program products. Except as provided in Article XV, Purchase Orders issued for Program Products will incorporate these terms by reference and will incorporate the applicable IBM Program Products List and shall be subject to review and acceptance by IBM before IBM shall be obligated to perform.

IBM grants a non-transferrable and non-exclusive license to use the Program Products, including basic material (together referred to as licensed programs) and related optional materials (optional materials) which are ordered from time to time by the University.

(IBM/UCal/72)

SAMPLE PROVISION

Scope of Contract Commitments I - 1

The University's and IBM's remedies in this agreement are exclusive.

(IBM/UCal/72)

SAMPLE PROVISION

Scope of Contract Commitments I - 1

Any written commitment by a contractor within the scope of the contract shall be binding upon the contractor whether or not incorporated into a delivery order. Failure of the contractor to fulfill any such commitment shall render the contractor liable for liquidated or other damages due the Government under the terms of this contract.

For the purpose of this contract a commitment by a contractor includes (1) price and options committed to remain in force over a specified period(s) of time, (2) any warranty or representation made by the contractor in a proposal as to hardware or software performance, any other physical design or functional characteristics of a machine, software package or system, (3) any warranty or representation made by a contractor concerning the characteristics or items described in (2) above made in any literature, descriptions, drawings or specifications accompanying or referred to in a proposal, (4) any modification of or affirmation or representation as to the above which is made by a contractor in or during the course of negotiations whether or not incorporated into a formal amendment to the proposal, supporting documents or negotiations subsequent thereto as to training to be provided, services to be performed, prices and options committed to remain in force over a fixed period of time or any other similar matter regardless of the fact that the duration of such commitment may exceed the duration of this contract.

(X/GSA/74)

I.2. OTHER APPLICABLE LAWS

Any complete contract for the purchase or lease of a software package should contain a statement which identifies the state in which the agreement is being drawn and under which the agreement would be regulated. The purpose of this statement is to acknowledge the subjection of the agreement to relevant state and federal laws of which the contractors might be unaware at the time of the making of the contract.

Especially if the contract is being drawn between two contractors resident in different states, or between an institution and an agency of the federal government, reference to the appropriate federal laws should also be made.

SAMPLE PROVISION

Other Applicable Laws I - 2

> Any provision required to be included in a contract of this type by any applicable and valid Federal, State, or local law, ordinance, rule or regulation shall be deemed to be incorporated herein.

(X/UCal/72)

I.3. MODIFICATION OF AGREEMENT

In this section one should outline the method of amendment for the contract and the procedures to be used to settle any disputes related to the contents of the contract or amendments. It is important to be as specific as possible in this section in order to have clearly understood by both parties the type of notice which must be given and the amount of time which must elapse after notice is given before a change can be made. In addition, a procedure should be established to calculate the details of extra cost and additional staff. (See also Section III - 14 Prices).

One way of handling modification of the agreement is to appoint an individual or officer of the contracting institution as the authorized agent to negotiate change in the agreement. The authorized agent is then the only person who can negotiate change either in system specification or in terms of the agreement to lease or buy. A sample clause of this type is not available for purchase or lease of a software package. See *Part 2, Custom Software,* for a sample authorization clause.

The sample clause shown below is a standard one based on the IBM program products agreement. While it does not offer any advantage to the college or university, it does provide for modification of the agreement by either party.

SAMPLE PROVISION

Modification of Agreement I - 3

The terms of this Agreement may be modified by IBM or the University upon written ammendment to this Agreement executed by both parties. The term "this Agreement" as used herein includes any future written amendments, modifications or supplements made in accordance herewith.

The University may propose additional or revised terms for any Purchase Order issued during the effective period of this Agreement by typing the proposed additions or revisions on the face of the Purchase Order and by specifying thereon that "the following terms are additions or changes to the basic Program Products License Agreement of IBM and the University of California for purposes of this order only." Such changes shall be subject to acceptance by IBM prior to delivery of any program.

(IBM/UCal/72)

I.4. TERM OF CONTRACT

A clause which designates the term of the contract should designate both the beginning and end of the term of the contract and the conditions under which that term will begin and end. If the parties have come to an agreement on the conditions under which the contract will be renewed, a general summary of these conditions should also be stated here. Although the conditions under which the contract may be canceled should be expanded in some detail in later portions of the contract, reference to specific actions or conditions which would cause the contract to automatically terminate may be made in this section. (See also sections III - 3 Cancellation of Agreement, III - 5 Discontinuance of Use, and III - 9 Licenses).

SAMPLE PROVISION

Term of Contract I - 4

This Contract is effective after signing by the Contractor and on the date of its last approval or certification of exemption from approval by or on behalf of the contracting State agency, the Director of Finance, and the Director of General Services, and the period of lease shall extend through _____ subject to the availability of funds.

Rider B shall designate the installation date, and, if applicable, removal date of each machine to be leased under this Agreement.

(X/CalSt/73)

II. DELIVERY AND INSTALLATION

Clauses related to delivery and installation of software are among the most important in a contract, and often include remedies and penalties. In addition to specifying a required time for delivery, clauses in this section of the contract should specify procedures and, if possible, standards to be met during installation and acceptance. Provisions regarding risk of loss or damage of software are also grouped in this section since this risk is encountered during delivery.

II.1. DELIVERY DATES

It is important in the lease or purchase of software, as in the purchase of hardware, that a distinction be made between delivery and installation. If the distinction is made, the vendor cannot use delivery of software as satisfaction of installation requirements. Delivery and installation dates, or schedules to follow the signing of the contract, should be determined and agreed upon before the contract is drawn so that specific reference to these dates might be included in the contract. While an exact delivery date is often considered less crucial for software packages which will be used on existing computing hardware, software which is essential to the running of new hardware must be received and installed according to the set schedule if the entire system is to be operational as expected.

It is wise to include remedies and penalties in the contract for late delivery of purchased or leased software. The G.S.A. revised standard request for proposal and model contract contains quite specific remedies (such as return of the equipment) which the government may employ if software is not delivered. Penalties, including liquidated damages, may be employed upon extensive delay in delivery.

One can also reference the date of the signing of the contract and require that software be delivered within one month following that date. (See also Section II - 2 Installation).

SAMPLE PROVISION

Delivery Dates II - 1

When available from the Library, licensed programs will be shipped to the University generally within one month after confirmation or order, subject to conditions beyond IBM's control, unless the University requests a later delivery date.

(IBM/UCal/72)

SAMPLE PROVISION

Delivery Dates II - 1

The Contractor shall provide those programming aids listed on Rider C without extra charge, except for recording media and transportation charges, on the delivery dates specified in Rider C.

or

(If Contractor supplies the Primary Operating System programs at a charge, use the following:)

The Contractor shall provide, without extra charge, except for recording media and transportation charges, those programming aids so indentified on Rider C, on the delivery dates therein specified. In addition, the Contractor will provide the Primary Operating System software programs for which a charge is made, for the charges specified on Rider C, and on the delivery dates therein specified, under the terms and conditions contained in Rider E, Terms and Conditions Applicable to Primary Operating System Software Programs, in addition to the terms and conditions contained in this Rider A.

(X/CalSt/73)

SAMPLE REMEDY

Delivery Dates II - 1

Any changes by the State to an order or any part thereof may require establishment of a new and/or an additional mutually agreed-to delivery date which shall be ratified by amendment to Rider C.

In the event the Contractor fails to deliver the agreed-upon programming aids by the date specified in Rider C, liquidated damages as prescribed in paragraph 4 will apply and the State may also at its option delay the equipment installation date.

If the Contractor's delay in delivering programming aids is more than thirty (30) calendar days, then by written notice to the Contractor, the State may terminate the right of the Contractor to install or may discontinue the equipment immediately in the event it was already installed.

When requested by the State, the Contractor shall furnish without additional charge (except for media, and their transportation) and during the period of this contract, any programs, compilers, routines, subroutines, etc., which it has developed or may develop at a future date for general use with the type of system ordered and which it furnishes to its customers generally at no additional charge.

(X/CalSt/73)

SAMPLE PENALTY

Delivery Dates II - 1

In the event the Contractor fails to deliver the agreed-upon programming aids by the date specified in Rider C, liquidated damages as prescribed in paragraph 4 will apply and the State may also at its option delay the equipment installation date.

If the Contractor's delay in delivering programming aids is more than thirty (30) calendar days, then by written notice to the Contractor, the State may terminate the right of the Contractor to install or may discontinue the equipment immediately in the event it was already installed.

When requested by the State, the Contractor shall furnish without additional charge (except for media, and their transportation) and during the period of this contract, any programs, compilers, routines, subroutines, etc., which it has developed or may develop at a future date for general use with the type of system ordered and which it furnishes to its customers generally at no additional charge.

(X/CalSt/73)

SAMPLE PENALTY

Delivery Dates II - 1

If the Contractor does not deliver all of the programming aids listed on Rider B & C that are required to meet RFQ specifications ready for operation in substantial conformance with the Contractor's specifications on or before the delivery dates specified on Rider C, the State may at its option delay the equipment installation date and the Contractor shall pay to the State as fixed and agreed liquidated damages in the amount of $100.00, or 1/30th monthly hardware rental charge (including maintenance) whichever is greater, irrespective of the number of programming aids undelivered, for each calendar day between the date specified in Rider C and the date of the delivery of such programming aids, but not for more than 180 calendar days in lieu of all other damages for non-delivery of software. If the Contractor provides suitable substitution of software, acceptable to the State, liquidated damages shall not apply, provided, however, liquidated damages will apply if such substituted software is provided later than the delivery date specified on Rider C. Liquidated damages for non-delivery of software shall likewise not apply for any day on which liquidated damages for non-installation of equipment accrues.

(X/Mich/72)

SAMPLE PENALTY

Delivery Dates II - 1

If the Contractor's delay in delivering programming aids as listed in Rider B & C or an equivalent substitute acceptable to the State, is more than thirty (30) calendar days, then by written notice to the Contractor, the State may terminate the right of the Contractor to install or may discontinue the equipment immediately in the event it was already installed. In the event that the State terminates the right of the Contractor to install or the State discontinues the equipment, the Contractor shall be liable for liquidated damages for the period of time between the date of delivery and the date that the State terminates the right of the Contractor to install or the date of discontinuance of rental of the equipment, but not for more than 180 calendar days. The Contractor shall be liable for all outbound preparation and shipping costs for contracted items returned under this clause. Liquidated damages for non-delivery of software shall likewise not apply for any day on which liquidated damages for non-installation of equipment accrues.

(X/Mich/72)

SAMPLE PENALTY

Delivery Dates II - 1

Licensed programs listed in the Price List and available from the Library will be normally shipped to the Government within 30 days after IBM's receipt of an order and any required program storage media, subject to conditions beyond IBM's control.

Liquidated damages shall be the exclusive damages available to the Government for delay in confirmed installation, delivery or shipment.

IBM shall ship a licensed program of optional materials package before a shipping date (day, month, year) agreed to by IBM and the Government. The shipping date shall be written into the order and the order shall be forwarded to IBM by certified mail. Written confirmation of the order shall be made by IBM within 60 calendar days from the date of the certified mail receipt by IBM, except that IBM may not propose a shipping date different from that in the order if IBM has previously agreed to that same date in writing, and in such event, the order does not require confirmation. If the shipping date is not confirmed by IBM, the date specified in the purchase order shall be considered to be confirmed by IBM.

If IBM does not ship a licensed program or optional materials package before the shipping date as established above, IBM shall pay to the Government, as fixed and agreed liquidated damages, 1/30th of its monthly charge for each calendar day's delay in shipment, but not for more than 180 calendar days.

Except with respect to defaults of subcontractors, IBM shall not be liable for liquidated damages when delays arise out of causes beyond the control and without fault or negligence of IBM. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the delays must be beyond the control and without the fault or negligence of IBM. If the delays are caused by the default of a subcontractor, and if such default arises out of causes beyond the control of both IBM and subcontractor, and without the fault or negligence of either of them, IBM shall not be liable for liquidated damages for delays, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit IBM to meet the required performance schedule.

II.2. INSTALLATION

Since a software package resident on magnetic tape or cards is of no use to the buyer unless it is operational on the buyer's equipment, some requirement for installation and standard definition of installation ought to be included in a contract for the lease or purchase of a software package. Often the definition of installation and an outline of standards of acceptance are virtually indistinguishable. Specific examples of standards of acceptance have not been submitted for inclusion in this volume, but acceptance procedures are included under section II.4. Acceptance Procedures.

Remedies and penalties for failure to install according to the set standards are also important. The General Services Administration of the U.S. Government, which has had extensive experience in purchasing software packages for use by government agencies, utilizes strict remedies and penalties to insure that installation is completed by the date outlined in specific contracts. Similar remedies have been used by the California State University. Even if the likelihood of default by the contractor is considered remote, the quality of vendor performance in completing an installation of a particular software package or system can be improved substantially if remedies and penalties are included in the contract.

The remedies outlined below in the GSA sample clauses are structured primarily for software which is part of the operating system of the computing hardware. Remedy, therefore, consists of return of the hardware and liquidated damages on the hardware which has not been installed. Penalties for late installation may also be applied to software which has been provided by an independent vendor. The California State University requires liquidated damages structured on a fee per day basis. (See also II - 1, Delivery Dates , and II - 4, Acceptance Procedures.

SAMPLE REMEDY

Installation II - 2

The contractor agrees to rerun the benchmark tests shown in SECTION G, Attachment 3, of this contract, on the initial installation(s) prior to the scheduled installation dates(s).

The time to perform the benchmark reruns will be within _____% of the original benchmark utilizing the hardware and software listed in SECTION G, Attachments 4 and 5 respectively.

(X/GSA/73)

SAMPLE PENALTY

Installation II - 2

If the Government is unable to use the equipment because the contractor fails to furnish the software on or before the delivery date or furnishes software which does not perform in accordance with the technical specifications set forth in the vendor's system/equipment proposal (SECTION G, Attachment 6), liquidated damages as specified in paragraph 9.1.1 shall apply in addition to the liquidated damages as specified in paragraph 9.2.1 provided, however, that the total charges for any month shall not exceed _____% of the basic montly rental and maintenance charges for the equipment, and not for more than _____ days.

(X/GSA/73)

SAMPLE PENALTY

Installation II - 2

If the contractor does not deliver the software identified in paragraph 5.1 ready to perform as prescribed in the technical specifications set forth in the vendor's system/equipment proposal (SECTION G, Attachment 6), on or before the delivery date specified,

the contractor shall pay to the Government as fixed and agreed liquidated damages of $_____for each calendar day's delay for each software item not delivered as prescribed and for any other software items not usable as a result thereof, or for each calendar day an amount equal to_____th of the basic monthly rental and maintenance charges for the equipment, whichever is greater, but not for more than _____calendar days.

In the event the provisions of paragraph 9.1.3 are applicable and substitute equipment is installed, the contractor shall be liable for liquidated damages for the period of time between the specified delivery date and the time the software items for the substitute equipment are delivered, ready for use, or for _____days from the delivery date, whichever occurs first.

(X/GSA/73)

SAMPLE PENALTY

Installation II - 2

The installation dates of the equipment set forth in Rider B and the delivery dates for programming aids set forth in Rider C have been fixed so that the utilization of the equipment and programming aids is consistent with the timing schedules of State's programs. If any of the programming aids are not delivered to the State within the time limits specified in Rider C and if any of the units of equipment are not installed within the time specified in Rider B, the delay will interfere with the proper implementation of the State's programs utilizing the equipment leased pursuant to this contract, to the loss and damage of the State. From the nature of the case, it would be impracticable and extremely difficult to fix the actual damages sustained in the event of any such delay. The State and the Contractor, therefore, presume that in the event of any such delay the amount of damage which will be sustained from a delay will be the amount set forth in this paragraph 4, and they agree that in the event of any such delay, the Contractor shall pay such amount as liquidated damages and not as a penalty. Similarly, delay in readying the facility interferes with the installation schedule

under which the Contractor is operating, thus resulting in damages to the Contractor. From the nature of case, it would be impracticable and extremely difficult to fix the actual damages sustained in the event of any such delay. The State and Contractor, therefore, presume that in the event of such delay, the amount of damage which will be sustained will be the amount set forth in this paragraph 4, and they agree that in the event of such a delay, the State will pay such amount as liquidated damages and not as a penalty. Amounts due the State as liquidated damages may be deducted by the State from any money payable to the Contractor pursuant to this contract. The State shall notify the Contractor in writing of any claim for liquidated damages pursuant to this paragraph on or before the date State deducts such sums from money payable to the Contractor.

If the Contractor does not deliver all of the programming aids listed on Rider C ready for use in substantial accordance with the Contractor's specifications on or before the delivery dates specified on Rider C, the Contractor shall pay to the State as fixed and agreed liquidated damages in the amount of $100.00, irrespective of the number of programming aids undelivered for each calendar day between the date specified in Rider C and the date of delivery of such programming aids, but not for more than 180 days, in lieu of all other damages. If the Contractor provides suitable substitution of software, acceptable to the State, liquidated damages shall not apply, provided, however, liquidated damages will apply if such substituted software is provided later than the delivery date specified on Rider C. Liquidated damages for nondelivery of software shall likewise not apply for any day on which liquidated damages for noninstallation of equipment accrues.

(X/CalSt/73)

II.3. RISK OF LOSS OR DAMAGE

Clauses discussing the risk of loss or damage are often not included in agreements because contractors feel there is little risk. As with other contract terms, however, a statement of responsibility in the case of loss or damage to the product ought to be included on the assumption that the conditions of good will which prevailed during the negotiation of the contract might not continue uninterrupted.

Responsibility for replacement of a product lost or damaged during shipment is usually taken by the vendor. If the software and associated material is lost or damaged while in possession of the buyer, the vendor will usually replace the material but will charge for storage media unless it is provided by the buyer.

SAMPLE PROVISION

Risk of Loss or Damage II - 3

If any licensed program or optional material is lost or damaged during shipment, IBM will replace the licensed program or optional material and program storage media at no additional charge to the University.

If any licensed program or optional material is lost or damaged while in the possession of the University, IBM will replace the licensed program or optional material at a charge for program storage media unless it is provided by the University.

(IBM/UCal/72)

II.4. ACCEPTANCE PROCEDURE

The importance of outlining specific standards of acceptance has been discussed in section II.1. and II.2. Particularly if the payment schedule has been keyed to the acceptance of the product by the buyer, it is important to include specific criteria in attached software specifications which can be used to judge the acceptability of the software package. It is also useful to specify a pre-installation testing period of 30 or 60 days during which the software package can be run on the computing hardware of the buyer until the package runs in a productive mode. The software package should be made available to the buyer at no charge during this time.

Especially if the software is part of the operating system for a particular set of computing hardware, the standard of acceptance should state clearly that both the hardware and the software must run in a productive mode before either will be accepted. Charges for the hardware should not commence until both the hardware and the software have been accepted. (See also II - 2, Installation).

SAMPLE PROVISION

Acceptance Procedure II - 4

IBM shall honor orders for program licenses as provided herein. Certain programs licensed hereunder shall be made available for a pre-installation testing period as specified in the Program Product Price List. The testing period will begin ten days after shipment of the program by IBM and will end upon expiration of the specified period, or upon the Government achieving productive use of the program, whichever is earlier. Productive use refers to the processing of Government work or utilization of the program for the purposes intended by the Government in deciding to license the program.

Testing activities such as compilation, assembly or systems generation and check-out of the licensed program itself as well as testing activities using sample programs and jobstreams are not considered productive use. After this testing period the minimum use period for each license is 30 days from the commencement of its monthly charges except as provided below for termination at the end of the Contract period. For programs for which IBM does not specify a testing period, the minimum use period will begin ten days after shipment of the program by IBM.

(IBM/GSA/74)

SAMPLE REMEDY

Acceptance Procedure II - 4

No payment (Use Charge of Initial Charge) shall be made until the Software Program has been accepted by the University.

(X/UCal/72)

II.5. STORAGE MEDIA

In some cases where the hardware of the buyer can accept only certain types of storage media, it is important to specify in the purchase or lease agreement the type of storage media on which the software package will be transported. If the buying institution wishes source listings, load modules or documentation on magnetic tape or other media, this requirement should be specified.

The sample clause on the following page includes requirements for format as well as type of storage media.

SAMPLE PROVISION

Storage Media II - 5

The individual bibliographic records in the Licensed Item to be delivered by Licensor to Licensee shall be formatted according to the specifications described in the technical paper, "U. C. Union Catalog Supplement Record Structure" dated March 1, 1972. The magnetic tapes provided to Licensee will be 9 track, labelled and recorded at 800 bpi density. The physical records on tape will be variable blocked with maximum length of 3154 bytes.

(RAbel/UCUCS/74)

III. TERMS OF USE

The types of clauses in this section, Terms of Use, include provisions, remedies, and penalties governing the use of software packages after they have been installed. Some clauses are related to the purchase or lease process, but refer to steps in that process which would occur after installation as opposed to steps in the negotiating process.

III.1. ALTERATIONS IN SOFTWARE

It would be rather unrealistic for the vending institution to refuse to allow the buying institution to alter a software package. Improvements are discovered as additional users become aware of a package, and use on different machines requires modifications to achieve the greatest efficiency in each setting. Modifications to the software, however, do cause difficulties for the vendor, especially with regard to patent and copyright infringements. Primarily to protect the vendor from suits regarding patent and copyright infringements, clauses are most frequently included in software lease and purchase agreements which restrict the types of modifications that may be made to software packages.

Other clauses allow modifications but require that the licensed item, as modified or improved, shall continue to remain the property of the licensor. Even if modifications are allowed, and the improved item not claimed by the licensor, only the portion of the improved package which is new can be claimed by the buying institution.

An interesting variation on the common clauses used to describe permissible modification is the clause included in the

contract between the University of California (the licensor) and Richard Abel and Company (licensee) shown below. This clause states that any fees and royalties derived from products or copies sold from any modified or improved data files shall be subject to the same royalty payments as provided in the schedule for the original data file.

Modifications to the software package are normally made by a vendor over a period of time. Sample clauses of this type are included in Section III - 1, Maintenance. The wise buyer requires (in the contract) that improvement modifications be made available to the buying institution at no charge during the time of lease of a software package. In the case of purchase of a software package, one might specify that improvements generated by the vendor during a set period of time, for example two years, following the initiation of the contract must be available to the buying institution. (See Maintenance, updating and continuing, III - 10(b).)

SAMPLE PROVISION

Alterations in Software, modifications by user III - 1(a)

At its own expense, Licensee may make such modifications and improvements to Licensed Item as it deems appropriate or necessary. It is agreed that the Licensed Item as modified or improved shall be and remain the property of Licensor, and that all products and copies sold from any such modified or improved file shall be subject to royalty payments as provided in the contract section Fee and Royalty.

(RAbel/UCUCS/74)

SAMPLE PROVISION

Alterations in Software, modifications by user III - 1(a)

The University may modify any licensed program and/or optional material, in machine readable form, for his own use and merge it into other program material to form an updated work, provided that, upon discontinuance of the license for such licensed program, the licensed program and optional material supplied by IBM will be completely removed from the updated work and dealt with under this Agreement as if permission to modify had never been granted. Any portion of the licensed program or optional material included in an updated work shall be used only on the designated CPU, and shall remain subject to all other terms of the Agreement.

(IBM/UCal/72)

SAMPLE PROVISION

Maintenance, Updating and continuing III - 1(b)

In addition, the contractor will make available any other software which the original manufacturer has announced or may announce in the future for general use as furnished to other customers using the same type of equipment supplied under this contract without charge.

(X/GSA/74)

III.2. ASSIGNABLE RIGHTS

Provision for the assignment of rights should be included both on lease contracts and purchase contracts. Where a lease contract is expected to be in effect for an extended period of time, the assignment of rights is especially important because the customer may decide to discontinue using the software package in advance of termination of the lease. However, few examples are available of assignment clauses favorable to the buyer. In most cases, the lessor forbids the assignment of rights to a product to a third party, especially if the product will be sold to a third party, but specific arrangements can be made. In this section, a copy of an agreement in principle reached by Informatics and the University of Pennsylvania to transfer University of Pennsylvania rights to software products to UNI-COLL Corporation illustrates one such arrangement.

SAMPLE PROVISION

Assignable Rights, Limitation of III - 2(a)

This Agreement and any of the licenses, programs or materials to which it applies may not be assigned, sublicensed or otherwise transferred by the University without prior written consent from IBM.

(IBM/UCal/72)

SAMPLE PROVISION

Assignable Rights, assignment agreement III - 2(b)

Informatics agrees in principle to allow Customer to transfer his rights in and to the Products, as a result of this license, to UNI-COLL Corporation subject to the following provisions:

1. Such transfer is subject to an upgrade of the Products to the full initial installation price with a service license at the then current prices. Upgrade credit will be based on the standard MARK IV upgrade policy in effect at the time of the transfer.

2. Customer will promptly provide to Informatics a written description of the organization, ownership, and business of UNI-COLL Corporation.

3. Such transfer is subject to the ownership and business of UNI-COLL being substantially the same at the time of transfer as that contained in the written description provided at this time.

4. Informatics' agreement in principle to allow Customer to effect such transfer is valid for a period of two years from the date of delivery of the Products to Customer.

5. Final approval for such transfer must be requested by Customer, and will be granted by Informatics, in writing, subject to the provisions above. Such written consent will not be unreasonably withheld.

(INFO/Penn/73)

III.3. CANCELLATION OF AGREEMENT

Precise terms of cancellation ought to specify the conditions under which the agreement can be cancelled, the amount of notice required and the responsibilities of both parties in the case of cancellation of the agreement. It is also wise to include reference to a method of arbitration in the case of dispute. Because many software lessors have had problems of patent and copyright infringement, clauses describing cancellation often reference patent infringement. However, agreements may also be terminated for any reason with sufficient written notice. (See also Sections I -4, Term of Contract , and III - 5 Discontinuance of Use).

SAMPLE PROVISION

Cancellation of Agreement III - 3

Any license under this Contract may be discontinued by the Government upon written notice at any time during the testing period, or at the conclusion of the minimum use period, or at any time thereafter upon 30 days prior written notice. Any license may be discontinued by IBM if the Government fails to comply with any of the terms and conditions or other provisions of this contract, or as stated in paragraph 2.d. Notice of discontinuance by either party of any program license will be notice of discontinuance of any license for optional material obtained in connection with such program license.

(IBM/GSA/74)

SAMPLE PROVISION

Cancellation of Agreement III -3

Notice as stated above should also be provided for a discontinuance which occurs at the end of the Contract period, but failure to give notice shall not be deemed as obligating the succeeding fiscal year's funds. All orders automatically terminate on June 30 of the Contract period; however, ordering offices are instructed to notify IBM in writing 30 days prior to the expiration of the purchase order if the license is to be terminated at the end of the Contract period. Renewal of an order under the successor contract will be required if the license is to be continued during the subsequent contract period.

(IBM/GSA/74)

III.4. COPYING

The number of copies of documentation for a software package and of the machine readable data contained in the package ought to be set forth in the contract. If third party use is allowed, special requirements, such as completion of a written agreement between the leasee and a third party user should be stated in the contract. The contract should also describe specifically any responsibilities of copyright notice and any limitation on the number of copies to be transferred to new locations or new individuals. Sample clauses in this section are grouped into three categories: a) limitation of copying; b) copyright; and c) transfer of copies to new location.

SAMPLE PROVISION

Limitation of Copying III - 4(a)

The Government is not granted any right to use or copy in whole or in part, any licensed programs or optional materials other than as expressly stated elsewhere in this Contract. Additional copies of printed materials may be licensed from IBM at the charges then in effect.

Any licensed programs or optional materials which are provided by IBM in machine readable form may be copied, in whole or in part, in printed or machine readable form in sufficient number for use by the Government with the designated CPU, to understand the contents of such machine readable material, to modify the licensed program as provided below, for backup purposes as provided in Paragraph 3., LICENSE, or for archive purposes, provided however, that no more than five printed copies will be in existence under any license at any one time without prior written consent from IBM. The Government agrees to maintain appropriate records of the number and location of all copies that it may make of licensed programs or optional materials which are provided by IBM in machine readable form. The original, and any copies of the licensed programs and/or optional materials, in whole or in part, which are made by the Government shall be the property of IBM.

(IBM/GSA/74)

SAMPLE PROVISION

Limitation of Copying III - 4(a)

The University shall use its best efforts to prevent the unauthorized duplication or disclosure of the Software Program.

(X/UCal/72)

SAMPLE PROVISION

Copying, Copyright III - 4(b)

The Government agrees to reproduce and include IBM's copyright notice on any copies, in whole or in part, in any form, including partial copies in modifications, of licensed programs or optional materials made hereunder in accord with the copyright instructions as set forth in Appendix D.

(IBM/GSA/74)

SAMPLE PROVISION

Copying, Transfer of Copies to New Location III - 4(c)

If the original or any copy of the licensed program or optional materials will be kept at other than the location of the designated CPU, the University will notify IBM in writing of a designated location for the original or copy. However, the University may transport or transmit a copy of the original of any licensed program to another location when the license is temporarily transferred as provided in the section of this Agreement entitled "License," provided the copy or the original is destroyed or returned to its designated CPU.

(IBM/UCal/72)

III.5. DISCONTINUANCE OF USE

Although some mention of the procedures to be followed upon discontinuance of use will be included in the term or clause on cancellation of the agreement, specific instructions on the destruction of software packages and copies at the conclusion of the term of the agreement can be included in the contract in this section. (See also Sections I - 4, Term of Contract, and III - 3, Cancellation).

SAMPLE PROVISION

Discontinuance of Use III - 5

Within one month after the date of discontinuance of any license or termination of the order under this Contract, the Government shall certify to IBM in writing that through its best effort, and to the best of its knowledge, the original and all copies, in whole or in part, in any form, including partial copies in modifications, of the licensed program and any optional material received from IBM or made in connection with such license have been destroyed, except that, upon prior written authorization from IBM, the Government may retain a copy for archive purposes. However, where the Government has licensed a successive version of the program, which carries a different program number, the Government may retain the prior version of the program for backup purposes for a period not to exceed three months following the date of discontinuance. The Government agrees that any such backup copy will be used only in the event of a problem in the successive version of the program which prevents its use. In no case will both the prior and the successive versions of the program be used simultaneously for productive purposes. Within one month following this three month period, the Government shall certify that the backup copy has been destroyed as indicated above.

(IBM/GSA/74)

III.6. DOCUMENTATION

Particularly if a software package is one which has been used on different hardware from that maintained by the buying institution, complete documentation including a printed copy of the code used in the machine readable materials should be required. A simple statement to this effect with notation as to the number of copies and format or media on which those copies should be made will suffice. Delivery of the documentation should be required at the same time or earlier than delivery of the software package. (See also II -1, Delivery Dates and III - 10(c) Maintenance, Reporting Procedures, Errors.)

SAMPLE PROVISION

Documentation III - 6

Licensed programs and related optional materials which are provided by IBM in printed form under the terms of this Contract (referred to as program documentation) can be shipped to the Government by IBM up to six months prior to shipment of the complete program (which includes machine readable materials). Each program license authorizes the Government to utilize program documentation which is shipped prior to shipment of the complete program, provided that the Government agrees not to use any such program documentation in machine readable form for any purpose. Within the six month period following the date of shipment of the program documentation by IBM, the Government agrees that it will request that the complete program be shipped prior to, or at the conclusion of, the six month period or will discontinue its license for that particular program. The provisions for discontinuing a program license hereunder are in addition to those set forth in Paragraph 2.a. The provisions of Paragraph 2.b. apply to all program licenses even though only program documentation is shipped.

(IBM/GSA/74)

SAMPLE PROVISION

Documentation III - 6

The supplied program documentation will consist of 3 copies of the SPSS manual published by McGraw-Hill, 3 copies of the complete Update Manual issued by NORC, 3 copies of Xerox SPSS documentation, and relevant SPSS newsletters and bulletins, if any.

(X/Carle/74)

SAMPLE PROVISION

Documentation III - 6

The Government shall be provided full documentation of all contractor changes and/or modifications to the software provided to meet the Government's mandatory requirements.

(X/GSA/74)

III.7. EMERGENCY TRANSFER OF USE

This need not be a separate clause of the contract but may be included under the clause which defines the limitation of license or the limitation on the number of copies of the program which might be made. Specific mention should be made somewhere in the contract, however, of the right of the licensee to transfer a software package to another CPU during times when the original CPU for which the license was granted is inoperable.

SAMPLE PROVISION

Emergency Transfer of Use III - 7

The license granted under this Agreement for the designated CPU shall be temporarily transferred to (1) one back-up CPU if the designated CPU is inoperative due to malfunction, or during the performance of preventive maintenance, engineering changes, or changes in features or model, until the designated CPU is restored to operative status and processing of the data already entered into the back-up CPU is completed, and (2) to one other CPU for assembly or compilation of the licensed program if the specifications of the designated CPU are such that the licensed program cannot be assembled or compiled on the designated CPU.

(IBM/UCal/72)

III.8. LIABILITY

It is customary in lease contracts of any kind to include a clause regarding liability of the vendor for physical damages caused by personnel from the vendor's organization on the customer's site and for accident or illness arising from use of the licensed product. In the context of limiting, the vendor's liability such damages have been mentioned in

contracts for software packages. The contract between IBM and the General Services Administration (1974) allows for possible general damages. Vendors have accepted responsibility for patent and copyright infringement charges derived from the use of a leased software package. (See Patent and Copyright,Indemnity III - 12). In the contract, specific reference to such liability should be made. If copyright or patent infringement is caused by combination of a leased or purchased software package with modifications or improvements made by the buyer, the vendor does not remain liable.

SAMPLE PROVISION

Liability III - 8

Licensee agrees to indemnify and hold harmless Licensor, its agents, officers, and employees, either in their individual capacities or by reason of their relationship to Licensor, from any and all claims and demands which Licensee and/or any third party and any or all claims and demands which Licensee and/or third party and any or all persons or their successors may have against Licensor by reason of any accident, illness, injury, damage, or other consequences arising or resulting from the license herein granted and occurring at any time subsequent to this grant.

(RAbel/UCUCS/74)

SAMPLE PROVISION

Liability III - 8

The University further agrees that IBM will not be liable for any lost profits or for any claim or demand against the University by any other party, except a claim for patent or copyright infringement as provided herein.

(IBM/UCal/72)

SAMPLE PROVISION

Liability III - 8

The Government agrees that IBM's liability hereunder for damages, other than liquidated damages as provided in Paragraph 12, including but not limited to liability for patent or copyright infringements, regardless of the form of action, shall not exceed the charges paid by the Government for the particular licensed program or optional material involved.

(IBM/GSA/74)

III.9. LICENSES

The most common limitations to a license for a specific software package is the limitation to a particular CPU. Separate licenses are often required for each CPU on which a software package will be used. The IBM/GSA contract cited below gives a good definition of CPU. A similar specific description of the CPU should be included especially where remote access will be provided for software users. The term during which the license will apply, and any related or optional materials which the license will also cover, should also be specified. (See also Section I - 4, Term of Contract).

Where several CPU's are joined to make a single computer system, the software license may apply to the entire system as if it were a single CPU. Multiprocessor systems might include: a multiple CPU system directly connected by cable and operated in a single system made under the control of ASP; a directly cable-connected multiple CPU system operated in a single system made under the control of JES 3; or, multiple processor systems operating in a multiprocessing mode i.e., 360/65, 360/67, 370/158 MP, 370/168 MP or an equivalent.

SAMPLE PROVISION

Licenses, General III - 9(a)

Each program license granted hereunder authorizes the Government to use the licensed program in any machine readable form on a single central processing unit designated by type/serial number and its associated units (together referred to as CPU for the purposes of Special Item 132-30 only) or on the CPU designated under another then current license for the identical Program Product. Each optional material license granted hereunder authorizes the Government to use the optional material in any machine readable form on the designated CPU or on the CPU designated under another then current license for the idential Program Product. A separate license is required for each CPU on which the licensed program and/or optional materials in any machine readable form will be used, provided, however, that the license granted under this Contract for the designated CPU shall be temporarily transferred to (1) one backup CPU if the designated CPU is inoperative due to malfunction, or during the performance of preventive maintenance, engineering changes or changes in features or model, until the designated CPU is restored to operative status and processing of the data already entered into the backup CPU is completed, and (2) to one other CPU for assembly or compilation of the licensed program if the specifications of the designated CPU are such that the licensed program cannot be assembled or compiled on the designated CPU. For each program for which IBM specifies "Installation License Applies" in the Program Product Price List, all references to "the designated CPU" shall mean "the designated CPU and any other CPU located in the same single room or contiguous rooms unless otherwise agreed to in writing by IBM." For the purposes of Special Item 132-30, "use" is defined as copying any portion of the licensed program's and/or optional material's instructions or data from storage units or media into the CPU for processing. Licenses granted under this Contract authorize the Government to utilize licensed programs and/or optional materials in printed form, in support of the use of such licensed programs and/or optional materials in machine readable form.

(IBM/GSA/74)

SAMPLE PROVISION

Licenses, Redesignation of CPU III - 9(b)

The University may notify IBM of its intention to redesignate the CPU on which a licensed program and optional materials are to be used. The redesignation will be effective upon the date specified in an amendment to the appropriate Program Product Sheet furnished to the University by IBM.

(IBM/UCal/72)

SAMPLE PROVISION

Licenses, optional materials III - 9(c)

Program licenses granted under this Contract will govern any basic materials, in machine readable or printed form, provided by IBM in the quantities specified for each program license, and any additional copies in printed form licensed from IBM at the charges in effect at the time of their shipment.

For certain licensed programs IBM will offer to license related optional materials, under this Contract or under a separate agreement, provided, however, that optional materials will only be available to customers who have licensed the programs to which such optional materials apply. Optional materials will be provided by IBM in the quantities specified for each optional materials license. Any additional copies in printed form may be licensed at charges in effect at the time of their shipment.

(IBM/GSA/74)

SAMPLE PROVISION

Licenses, term III - 9(d)

The term of this license shall run for a period of seven (7) years from the date of this agreement and may be renewed at the option of Licensee for two additional seven year periods on the same terms as herein provided, upon application to Licensor prior to the expiration of the then current license period. At the expiration of the final period, the license shall continue on a year to year basis unless terminated by either party upon 90 days written notice.

(RAbel/UCUCS/74)

III.10. MAINTENANCE

As in the case of hardware maintenance, specific reference to the hours during which maintenance service will be rendered and the speed with which it will be rendered, and the

conditions under which it will be rendered, should be made in the contract. Even if a software package is not an integral part of the operating system of a computing system, time limits should be set for maintenance on an emergency basis and the parameters of continuing maintenance outlined. Remedies are appropriate when maintenance is not rendered according to the contract. One such remedy is outlined below.

Sample provisions included here for updating and continuing maintenance are not particularly favorable to the contracting college or university, but illustrate the standard clauses regarding continuing maintenance which IBM has included in its program products agreements. Clauses relieving the university of responsibility for updating and continuing maintenance have not been submitted for inclusion in this document. See also section III - 6, Documentation and III - 14(c), of emergency services.

SAMPLE PROVISION

Maintenance, emergency III - 10(a)

IBM further agrees at any time during the leasing period to provide, at no additional cost to the University, programming services in correcting program errors and issue corrected releases for software programs with Class A support. However, IBM does not guarantee service results or represent or warrant that all errors will be corrected in any one call.

(IBM/UCal/72)

SAMPLE PROVISION

Maintenance, updating and continuing III - 10(b)

The University shall be exclusively responsible for the supervision, management and control of its use of the licensed programs, and/or optional materials including, but not limited to (1) assuring proper machine configuration, program installation, audit controls and operating methods, (2) establishing adequate back-up plans, and (3) implementing sufficient procedures and check points to satisfy the University's requirements for security and accuracy of input, as well as restart and recovery in the event of a malfunction.

(IBM/UCal/72)

SAMPLE PROVISION

Maintenance, updating and continuing III - 10(b)

In addition, the contractor will make available any other software which the original manufacturer has announced or may announce in the future for general use as furnished to other customers using the same type of equipment supplied under this contract without charge. The delivery date shall be mutually agreed upon by the contractor and the Government. The liquidated damages provisions of this contract do not apply to software furnished under this subparagraph 3.

(X/GSA/74)

SAMPLE PROVISION

Maintenance, reporting procedures, errors III - 10(c)

The support provided will consist of correction of errors, provisions of modifications and improvements that the original manufacturer may develop and provide to the Government under its Federal Supply Schedule contract without additional charges.

The Government shall be provided full documentation of all contractor changes and/or modifications to the software provided to meet the Government's mandatory requirements.

(X/GSA/74)

SAMPLE REMEDY

Maintenance, emergency III - 10(a)

Should the Lessor be unable to correct or patch any error, malfunction or defect in Software Programs within five (5) days from the University's request, the Lessor shall grant a credit to the University for each day in an amount equal to 1/30th of the Basic Monthly Charge. If it is determined that the purported error, malfunction or defect results from or arises out of the use by the University of Software not conforming with the Software Programs, as modified, corrected or improved by the Lessor, the Lessor, if requested by the University, will use its best efforts to make any necessary correction at additional cost to the University in accordance with the established Analyst Rates.

(X/UCal/72)

SAMPLE REMEDY

Maintenance, emergency III - 10(a)

Should it be demonstrated that the program does not conform to its published specifications, all charges shall cease until program is corrected to conform, provided no productive use of the program is made. If it is determined that the purported error, malfunction or defect results from or arises out of the use by the University of software not conforming with the software programs, as modified, corrected for improved by IBM, IBM if requested by the University, will use its best efforts to make any necessary correction at additional cost to the University in accordance with IBM's established rates.

(IBM/UCal/72)

III.11 ON-LINE ACCESS

As networking becomes more commonplace among colleges and universities, provision for on-line access to software packages by third parties will have to be described in contracts for software lease and purchase. Clauses regarding on-line access to software or data should cover the availability of a particular package to network users as if network users were local users. If the volume of network use is expected to be quite high, provision for additional payment or royalties to the vendor may also be desirable. The sample clause shown below is drawn from an agreement where the lessor is the University of California, Union Catalog System and the leasee is the Richard Abel Company. In this case, a provision regarding on-line access is contemplated for the future rather than set forth in this agreement.

SAMPLE PROVISION

On-line Access III - 11

It is contemplated that this agreement may in future be amended to permit Licensee to provide one or more means of on-line access to the Licensed Item or portions thereof.

(RAbel/UCUCS/74)

III.12. PATENT AND COPYRIGHT INDEMNITY

Clauses on patent and copyright indemnity limit the liability for patent and copyright infringement to the vendor of the software package. The one case in which the leasee would be held accountable is a situation where modifications made at the customer institution render the software package an infringement of a patent or copyright.

If patent or copyright infringement does occur, the vendor can be required to take back the software and refund prepaid fees.

SAMPLE PROVISION

Patent and Copyright Indemnity, general III - 12(a)

The lessor agrees to indemnify the University, its officers, agents, servants, and employees against liability of any kind (including costs and expenses incurred) for the infringement of any United States Copyright or patent arising by reason of the use of program products supplied under this order provided, however, that such infringement shall not be caused solely by the University's use or combination with other program material outside the scope of this license.

(X/UCal/72)

SAMPLE PROVISION

Patent and Copyright Indemnity, limitations of III - 12(b)

IBM shall have no liability for any claim of copyright or patent infringement based on (1) use of other than a current unaltered release of the licensed program or optional materials available from IBM if such infringement would have been avoided by the use of a current unaltered release of the licensed program or optional materials available from IBM or (2) use or combination of the licensed program or optional material with non-IBM programs or data if such infringement would have been avoided by the use or combination of the licensed program or optional material with other programs or data. The foregoing states the entire liability of IBM with respect to infringement of any copyrights or patents by the licensed programs or optional materials or any parts thereof.

The University agrees that IBM's liability hereunder for damages excluding liability for copyright infringements and including, but not limited to, liability for patent infringements, regardless of the form of action, shall not exceed the charges paid by the University for the particular licensed program or optional material involved.

The above limitation to patent liability is accepted by the University in that it is represented to be IBM's corporate policy to so limit their liability on software patent indemnification to all its customers. Should IBM indemnify without limitation any other commercial, State or local government customer for patent infringement of IBM software, it will likewise indemnify the University.

(IBM/UCal/72)

SAMPLE REMEDY

Patent and Copyright Indemnity, general III - 12(a)

If the use of such equipment or products by the State shall be prevented by permanent injunction, Contractor agrees to take back such equipment or products and refund any sums the State has paid Contractor under this lease, or pursuant to the purchase option, less any reasonable amount for use, maintenance or damage.

(X/Mich/72)

SAMPLE REMEDY

Patent and Copyright Indemnity, general III - 12(a)

Should the licensed programs or optional materials become, or in IBM's opinion be likely to become, the subject of a claim of infringement of a copyright or a patent, IBM may procure for the Government the right to continue using the licensed programs or optional materials, or replace or modify them to make them noninfringing. If neither of the foregoing alternatives is reasonably available to IBM, then IBM may discontinue the licensed program and/or optional materials upon one month's written notice to the Government, subject to the Government's right to require continued use of the programs or optional materials pursuant to the provisions of 28 U.S.C. 1498 In the event of such continued use, the Government shall notify IBM in writing of its election to continue to be licensed with respect to the licensed programs or optional materials and agrees to undertake at the Government's expense the defense of any action against the Government and to indemnify IBM with respect to all costs, damages, and attorney fees attributed to such continued use after such notice is given to IBM; it being understood that IBM may participate at its expense in the defense of any such action if such claim is against IBM. Upon IBM's written notice of discontinuance to the Government, a licensed program with Programming Service Classification A or B will be changed to Programming Service Classification C; and will reserve Programming Service Classification C service except that charges normally billable for Programming Service Classification C service will not be charged, unless otherwise chargeable under the terms of this contract as a result of having been announced prior to award.

(IBM/GSA/74)

III.13. PAYMENT

The details of a payment procedure can be set forth rather simply in a short clause in the purchase or lease agreement. In anticipation of unforeseen difficulties, one can include remedies for delay or default in payment.

One sample clause noted below provides for advance payment against royalties in a case where the leasee (Richard Abel Company) markets the package and associated retrieval services to third parties.

SAMPLE PROVISION

Payment Procedures III - 13

Monthly charges as set forth in the Price List will commence on the day following the end of the testing period, or ten days after shipment of the program by IBM if there is no testing period, provided, however, charges will not commence on a Saturday or Sunday. In the event of discontinuance of a program license and reordering the same program for the same installation, the Government agrees for that particular program license monthly charges and the minimum use period will begin ten days after shipment of the program by IBM and, therefore, there will be no testing period.

Monthly charges will be invoiced at the end of the month for which the charges accrue and will be payable promptly. Charges for a partial month's use will be prorated based on a 30-day month. In the event that the Government is of the opinion that any charges or credits on an invoice are not billed properly, every effort should be made to promptly pay the portion of the invoice not in question and give detailed written notice to IBM concerning the items in question.

(IBM/GSA/74)

SAMPLE PROVISION

Payment Procedures III - 13

In addition to the license fee under "A" above, Licensee shall, upon receipt of the Licensed Item from Licensor, pay to Licensor the sum of six thousand dollars ($6,000.00) as an advance payment on future royalty obligations.

(RAbel/UCUCS/74)

III.14. PRICES

A variety of information on prices ought to be included in the contract. In particular it is wise to include a clause retaining for the buyer the benefit of a reduction in price granted by the seller to other individuals or institutions. Often a change in price might become effective when the software package was transferred to another CPU, or the rights to the package assigned to another institution or individual. Prices for emergency services and the conditions under which those prices might escalate should also be set forth clearly.

If additional charges will be made for options and related material and if royalties will be paid for the sale or use of the material by third parties, details of these arrangements should also be included. A clause stating that program storage media will be provided at a charge is included in the appendix for this section [III - 14(g)] but is not highlighted as a sample clause since no price is set in the clause.

A general statement regarding the firmness of prices quoted by the vendor is a requirement in government contracts, and can profitably be included in other contracts as well. See also Section I - 3, Modification of Agreement and Section III - 10, Maintenance.

SAMPLE PROVISION

Prices, benefit of reduction III - 14(a)

Leasing charges shall be firm for the period of the order except that should the leasing price of a Software Program on this order be lowered during the period of the lease to any other customer, the University shall be charged at the lower rate effective at the time of the price change.

(X/UCal/72)

SAMPLE PROVISION

Prices, Change III - 14(b)

Informatics agrees in principle to allow Customer to transfer his rights in and to the Products, as a result of this license, to UNI-COLL Corporation subject to the following provisions:

Such transfer is subject to an upgrade of the Products to the full initial installation price with a service license at the then current prices. Upgrade credit will be based on the standard MARK IV upgrade policy in effect at the time of the transfer.

(INFOR/Penn/73)

SAMPLE PROVISION

Prices, of emergency services III - 14(c)

The Lessor further agrees to assist, unless specifically stated otherwise in this order, at no additional cost to the University, in diagnosing and verifying on-site any error, malfunction or defect in Software Programs and to commence such assistance within one (1) normal working day after the University's request. Should the Lessor be unable to correct or patch any error, malfunction or defect in Software Programs within five (5) days from the University's request, the Lessor shall grant a credit to the University for each day in an amount equal to 1/30th of the Basic Monthly Charge. If it is determined that the purported error, malfunction or defect results from or arises out of the use by the University of Software not conforming with the Software Programs, as modified, corrected or improved by the Lessor, the Lessor, if requested by the University, will use its best efforts to make any necessary correction at additional cost to the University in accordance with the established Analyst Rates.

(X/UCal/72)

SAMPLE PROVISION

Prices, of maintenance III - 14(d)

The contractor shall furnish the software required by the solicitation and listed on the delivery order and shall support and maintain the software, as well as any OEM modifications thereof, at no additional cost, during the period of this contract, including renewals thereof. The support provided will consist of correction of errors, provisions of modifications and improvements that the original manufacturer may develop and provide to the Government under its Federal Supply Schedule contract without additional charges.

(X/GSA/74)

SAMPLE PROVISION

Prices, of additional options/related material III - 14(e)

When shipment of program documentation is requested prior to shipment of the complete program, there will be a charge for the program documentation equal to one month's charge for the complete program (including any initial charge) or the single charge which may be in lieu of monthly charges. If the Government requests that the complete program be shipped prior to or at the conclusion of the six month period following the date of shipment of the program documentation by IBM, this charge will be credited to the first month's invoice for the complete program. If program documentation has been made available prior to shipment of the complete program and the Government discontinues and reorders the same program for the same installation, program documentation will not again be made available prior to shipment of the complete program.

(IBM/GSA/74)

SAMPLE PROVISION

Prices, royalties for third party use or sale III - 14(f)

As consideration for this license, Licensee agrees to pay Licensor a lump sum fee for in-house use of the Licensed Item, plus royalties on sales and distribution of derived products (either machine readable or non-machine readable) to third parties, in accordance with the Fee and Royalty Schedule attached hereto and made a part of this Agreement.

(RAbel/UCUCS/74)

SAMPLE REMEDY

Prices, of emergency services III - 14(c)

Should the Lessor be unable to correct or patch any error, malfunction or defect in Software Programs within five (5) days from the University's request, the Lessor shall grant a credit to the University for each day in an amount equal to 1/30th of the Basic Monthly Charge. It it is determined that the purported error, malfunction or defect results from or arises out of the use by the University of Software not conforming with the Software Programs, as modified, corrected or improved by the Lessor, the Lessor, if requested by the University, will use its best efforts to make any necessary correction at additional cost to the University in accordance with the established Analyst Rates.

(X/UCal/72)

III.15. PROTECTION AND SECURITY

Often the vendor expects the buyer to take certain precautions to guarantee the security of the software package and related materials during the time that the buyer is using them. These precautions should be described in the contract and, if necessary, remedies and penalties for default in this area should be set forth. A remedy might be recall of the software package while a penalty might include payment by the buyer of costs associated with the return of the materials, plus damages.

Particularly if a state or federal agency is party to the contract, a requirement that particular accounting records be maintained is often necessary. If third parties are expected to purchase or rent products produced with the software package, records required to justify the payment of royalties or other fees should be specified.

Sample clauses are grouped here into three categories: a) protection and security of software; b) accounting records required; and c) protection and security of data. No sample clause is available for category c. *Part II, Custom Software,* contains more elaborate clauses for these categories.

SAMPLE PROVISION

Protection and Security, accounting records required III - 15(a)

The University agrees not to provide or otherwise make available any licensed program or optional material, including but not limited to flow charts, logic diagrams and source code, in any form, to any person other than University or IBM employees without prior written consent from IBM, except during the period any such person is on the University's premises with the University's permission for purposes specifically related to the University's use of the licensed program or optional materials.

(IBM/UCal/72)

SAMPLE PROVISION

Protection and Security, of software III - 15(b)

Licensee agrees to provide Licensor with an accounting of sales receipts not less frequently than semi-annually, together with payment of royalties due thereunder, within 30 days after the close of the accounting period.

(RAbel/UCUCS/74)

III.16. STANDARDS OF PERFORMANCE

Standards of performance during a period of continuing use are appropriate when the software package is an integral part of an operating system. If guaranteed or implied performance criteria are stated in the contract, provision for remedying poor performance including financial penalties should be determined and included in detail. Methods should also be outlined for settling any disputes which arise because of poor performance. If the American Arbitration Association or other individual is to be used as an arbitrator in the event of a dispute, such designation can be made at this point in the contract.

For contracts dealing with lease of a software package continuance in an operational mode can be specified as a standard of performance with operational mode defined in the attached specifications. (See *Part 2, Custom Software* and Appendix c).

SAMPLE PROVISION

Standards of Performance III - 16

Software furnished shall conform to and perform in accordance with the OEM's technical specifications and data requirements for the equipment supplied under this contract.

(X/GSA/74)

III.17 TAXES

Liability for all taxes should be outlined with specific reference to the inclusion or exclusion of taxes from the purchase price. Government purchasing specifically excludes all state and local taxes. Depending on the tax exempt status of the customer institution, similar exclusion might be claimed by a college or university.

SAMPLE PROVISION

Taxes III - 17

The price or prices specified include all applicable taxes and will not be changed as the result of failure by the Seller to have included any applicable tax or as the result of any change in the Lessor's tax liability.

(X/UCal/72)

SAMPLE PROVISION

Taxes III - 17

Notwithstanding the provisions of Article 27 of the Supplemental Provisions (GSA Form 1424), the Contract price excludes all State and local taxes levied on or measured by the Contract or sales price of the services or completed supplies or licensed programs or optional materials furnished under this Contract except State and local taxes based upon IBM's or the Government's use of the services, supplies, programs, or materials. Taxes excluded from the Contract price pursuant to the preceding sentence shall be separately stated on IBM's invoices and the Government agrees either to pay to IBM amounts covering such taxes or to provide evidence necessary to sustain an exemption therefrom.

(IBM/GSA/74)

III.18. TECHNICAL SERVICES

All technical services to be rendered by the vendor to the customer without charge should be outlined in the contract. The responsibility of the vendor to correct errors and update software should have been included in the section of the contract regarding maintenance. However, the provision of continuing advisory services for particular packages can be described separately. In most cases additional services are offered by the vendor for set fees. A general description of these services and rates of payment for these services should be described in this section of the contract. The GSA sample clause is particularly good in this respect.

SAMPLE PROVISION

Technical Services III - 18

The Contractor's technical personnel shall be available to assist the State in implementation, review and improvement of existing data processing systems and in programming, development and implementation of new systems involving the Contractor's equipment. Charges, if any, for specified RFQ requirements shall be listed in Rider "B".

(X/Mich/72)

SAMPLE PROVISION

Technical Services III - 18

For certain licensed programs, as specified in the Price List, IBM will provide programming services after delivery, without additional charge and during the period of this Contract, to correct licensed program errors and issue corrected releases. However, IBM does not guarantee service results or represent or warrant that all errors will be corrected.

The Programming Service Classification of each licensed program is specified in the Program Product Price List.

(IBM/GSA/74)

SAMPLE PROVISION

Technical Services III - 18

Programming assistance will be provided by IBM on those IBM programs not receiving IBM Central Programming Service and on non-IBM programs when used in conjunction with IBM equipment. This assistance will be limited to diagnosis or assessment of specific problems in existing programming and, when appropriate, corrections which are assessed by IBM to require 8 hours or less to complete.

Additional systems generation for SCP's and systems generation for IBM control programs will also be provided.

Control panel wiring and debugging will be limited to diagnosing problems on control panels already wired and making modifications as required.

After the existing programming or wired panel problem has been diagnosed, IBM will assess the time required to fix. If it is assessed to be 8 hours or less, IBM will offer to make the required correction. If the time is assessed to be more than 8 hours, any further assistance may be provided by IBM outside of the scope of this Contract.

All IBM time spent in work under the provisions of this Paragraph 16 shall be charged to the Government at the applicable per-call rate per man-hour as set forth in Appendix C.

(IBM/GSA/74)

SAMPLE PROVISION

Technical Services III - 18

Any programming-related, or control panel-related, services which are not covered in this Contract by a provision explicitly obligating IBM to furnish them may be available from IBM with extra charges and outside the scope of this Contract.

(IBM/GSA/74)

III.19. TITLE

In a lease contract, title to the software usually resides with the leasor. In a purchase contract the time at which title passes to the buyer is normally the time of acceptance following installation. If the tax laws in a particular state favor a rental rather than purchase situation, a delayed purchase or purchase over time can sometimes be arranged in order to take advantage of the tax credit.

SAMPLE PROVISION

Title III - 19

The title to the Software Programs licensed under this order and any reproduction thereof furnished to the University by the lessor shall remain with the Lessor. The Software Program is understood to include, in addition to the documentation and all reproductions the original machine readable software, and modifications, improvements and corrections supplied to the University pursuant to this section.

(X/UCal/72)

III.20. TRAINING

If specific training is required in order to use a software package, it is best for the customer that the training sessions be scheduled within a period of several months and at the customer's location. If training will be required for additional individuals at a later date, training materials ought to be supplied by the vendor to the customer. These materials must be updated as the software is updated, or additional training must be provided by the vendor as a software package is updated. If a charge will be made for training additional individuals at a later date, the charges should be specified in this section.

The sample clause below outlines contractor commitments to train employees of the buyer of a management information system. See also Section III - 10, Maintenance.

SAMPLE PROVISION

Training III - 20

The Contractor shall train an adequate number of operating and programming personnel, including the initial staff and replacements, at the Contractor's training location, or if mutually agreed to, at a State location. Charges, if any, for initial staff, shall be listed in Rider "B".

(X/Mich/72)

III.21. TRANSFER OF USE

Provisions dealing with transfer of use appear under section III - 9(b), Licenses, redesignation of CPU and III - 7, Emergency Transfer of Use.

III.22. WARRANTY

The section on warranty should state the vendor's commitment to abide by the representation and specifications which have been included in any materials presented to the buyer in advance of the negotiations of the contract, including a proposal, brochures and supporting documentation upon which the order is based. In particular, documents or brochures to which reference is made in a proposal must be included in the representation to which the vendor will be held.

Although the warranty clause is usually used by the vendor to limit the guarantee of product performance, this is one place in a contract where the customer can obtain commitment from the vendor to abide by representations previously made. A commitment of this kind is useful in court or in a settlement should the vendor fail to fulfill those representations.

SAMPLE PROVISION

Warranty III - 22

Each licensed program with Programming Service Classifications A or B will conform to its published Program Product Specifications when it is shipped to the Government. Sample data will be shipped with such licensed programs to assure that the Government has received a valid copy.

Each licensed program with Programming Service Classification C will be distributed on an "as is" basis without warranty.

(IBM/GSA/74)

SAMPLE PROVISION

Warranty III - 22

The Lessor warrants that each licensed program will conform to its published program specification and shall meet such other criteria as represented in the proposal and included supporting documentation upon which this order is based.

(X/UCal/72)

SAMPLE PROVISION

Warranty III - 22

There is no warranty or representation, expressed or implied, as to the accuracy, suitability, or functioning of the supplied program, maintenance, and related materials, nor will Carleton University be liable for any loss or damage arising therefrom.

(X/Carle/74)

SAMPLE PROVISION

Warranty III - 22

Licensor makes no warranty either expressed or implied, as to the accuracy or bibliographic completeness of the records in the Licensed Item.

(RAbel/UCUCS/74)

Part 2: Custom Software

CONTRACTING FOR COMPUTING: SOFTWARE

PART 2: CUSTOM SOFTWARE

Checklist

	TEXT			APPENDIX (d)		
	Prov	Remedy	Penalty	Prov	Remedy	Penalty
I. The Agreement/Contract						
A. Affirmative Action	x					
B. Applicable Laws	x			x		
C. Arbitration	x					
D. Assignable Rights	x					
E. Authorized Agent						
a. for this agreement	x			x		
b. for change in agreement	x					
F. Cancellation	x			x		
G. Change in Agreement	x			x		
H. Scope of Contract Commitments	x			x		
I. Specifications						
a. data security	x					
b. other	x			x		
J. Term	x					
II. Software Development and Acceptance						
A. Acceptance						
a. procedure	x	x		x	x	
b. standards of	x			x		
B. Control	x	x		x	x	
C. Customer Services						
a. facilities	x			x		
b. information	x			x		
c. staff services	x					

	TEXT			APPENDIX (d)		
	Prov	Remedy	Penalty	Prov	Remedy	Penalt
D. Consulting Services	x					
E. Documentation						
a. delivery	x			x		
b. specifications	x	x		x		
F. Liability, limitation of	x			x		
G. Maintenance	x			x		
H. Patent and Copyright						
a. rights	x			x		
b. indemnity	x			x		
I. Payment procedure	x	x		x	x	
J. Personnel	x	x		x	x	
K. Prices						
a. general	x					
b. change	x			x		
c. limit	x			x		
d. travel & associated costs	x					
L. Protection and Security						
a. data	x			x		
b. technical information	x			x		
M. Schedule	x	x		x	x	x
N. Storage Media				x		
O. Supervision	x			x		
P. Taxes	x					
Q. Title	x			x		
R. Training	x					
S. Warranty	x	x		x		

Part 2: Custom Software

I. THE AGREEMENT

Terms and clauses in this section are concerned with the scope and effect of the agreement. In addition to clauses which describe the general nature of the agreement, specific reference is also made to procedures for altering the agreement at a future time.

I. A. AFFIRMATIVE ACTION

In all contracts to which the Federal Government or a State Government is party, and often in the case of public colleges and universities, an affirmative action clause is required. Whether or not such a clause is required for a particular institution, it can profitably be included in a contract for custom software development in which a number of staff will be involved.

SAMPLE PROVISION

Affirmative Action I-A

SCT agrees that there shall be no discrimination because of race, creed, sex, color, or national origin in the employment, training or promotion of personnel engaged in the performance of this Agreement.

(SCT/EIS/72)

I. B. APPLICABLE LAWS

As in a contract for lease or purchase of a software package, a term concerning applicable laws and regualtions ought to be included. In most cases it is sufficient to reference the laws of the state in which the contract is drawn or in which the contracting parties are located. However, legal counsel should be consulted to insure that any other applicable laws, for example, specific tax regulations, are referenced. The sample provision shown here makes general reference to a variety of laws which may be unknown to the parties of the contract at the time of the signing.

SAMPLE PROVISION

Applicable Laws I-B

The CONSULTANT shall perform the work required under this Contract in conformity with requirements and standards of the Commonwealth. The CONSULTANT shall also comply with all Federal, Commonwealth and local laws and ordinances applicable to any of the work involved in this Contract.

(SRG/MSCS/72)

I. C. ARBITRATION

Especially if the development of the custom software package is expected to take considerable time, it is wise to include a provision for arbitration. A dispute might arise between the contracting parties concerning accomplishment of the activities outlined in the document. If arbitors are to be selected according to American Arbitration Association regulations, reference to this procedure should be made. The sample provision shown below follows this pattern.

SAMPLE PROVISION

Arbitration I-C

Any dispute arising under or in connection with this Agreement shall be submitted to binding arbitration before a panel of three arbitrators in the City of Boston in the Commonwealth of Massachusetts pursuant to the rules of the American Arbitration Association.

(Ma/NotD/72)

I. D. ASSIGNABLE RIGHTS

It is most common to prohibit the assignment of rights or obligations of the agreement to other parties without the prior written consent of both parties of the contract. An exception to this general pattern is shown in the second sample provision below where subsidiaries and successors of the parties to the contract are allowed to assume the rights and obligations of the parties. A subsidiary is defined in detail. A provision of this kind would be most appropriate in situations in which public institutions dependent on state appropriations for funding are parties to the agreement.

SAMPLE PROVISION

Assignable Rights I-D

Neither this Agreement nor any rights or obligations hereunder may be assigned by either party without the prior written consent of the other.

(Ma/NotD/72)

SAMPLE PROVISION

Assignable Rights I-D

This agreement shall insure to the benefit of and be binding upon the subsidiaries and successors of the parties hereto, but it shall not be assignable by either party without the written consent of the other party. A "subsidiary" means any company or corporation the majority of whose voting stock is now or hereafter controlled either directly or indirectly by a party hereto, any such company or corporation being deemed a subsidiary only so long as such control exists. All obligations and covenants of the State/DHE contained herein with respect to the protection of SCT Confidential Business Information in the CUSTOM System or CUSTOM modifications shall be deemed to be covenants and obligations of the agents, contractors and employees of the State/DHE and SCT.

(SCT/EIS/72)

I. E. AUTHORIZED AGENT

In practice, one individual is appointed by each party to the contract to conduct the negotiations and formulate the agreement. It may also be useful to formally appoint an authorized agent for each party in the contract for the development of custom software. This procedure is especially useful if changes to the contract are anticipated at a later date. The sample provision shown below, drawn from a contract between Notre Dame University and a software development firm, illustrates the appointment of an authorized agent for negotiation of the current agreement and for changes in the contract at a future time.

SAMPLE PROVISION

Authorized Agent for this Agreement I-E(a)

The following persons, or their designees, are empowered to legally bind the parties of this Agreement to all original work, terms and conditions and subsequent new work, terms and conditions and/or revised work, terms and conditions hereunder.

(Ma/NotD/72)

SAMPLE PROVISION

Authorized Agent for change in Agreement I-E(b)

The following contracting officers have been designated to negotiate all work, terms, conditions and revisions hereunder.

(Ma/NotD/72)

I. F. CANCELLATION

In very few situations can either party to a contract completely foresee future events which might effect the agreement. To provide a fair alternative to both parties, a clause regarding termination of the contract ought to be included with provision for return of materials furnished to the university by the vendor and payment for work completed up to the point of termination. Although notice of up to 90 days could be required for termination, the sample provision shown below includes a 30 day written notice requirement which gives the university considerably more flexibility.

SAMPLE PROVISION

Cancellation I-F

Notwithstanding anything in this Agreement to the contrary, the University may terminate this Agreement at any time upon thirty (30) days written notice to the Company of intent to terminate. In such event, the Company shall promptly terminate all work and shall incur no further expense chargeable to the University. The University shall pay the Company for work performed up to the effective date of termination at the Company's then current billing rates for hourly work, the Company's final figure of cost to be subject to audit by the University as to hours expended, as a basis for final discharge of all obligations of the University to the Company for services performed under this Agreement. In the event of such termination, all materials developed to date, and all materials furnished by the University will be returned to the University by the Company prior to final payment by the University.

(Ma/NotD/72)

I. G. CHANGE IN AGREEMENT

In this section specific procedures for making a change in the agreement are set forth. These procedures are separate from identification of an authorized agent for both parties and separate from provision for early cancellation of the contract. Written procedures for changing the agreement are useful in two ways. First, early agreement on procedures for change can save considerable negotiating time later. Second, the possibility of misunderstanding regarding change in the agreement is forestalled by creating the set procedure for change. The sample provision shown below describes the change procedure as well as conditions under which change procedure will be initiated.

SAMPLE PROVISION

Change in Agreement I-G

(a) This Agreement is based on specifications set forth in Appendix A to this Agreement.

(b) No changes in specifications, requested or suggested by either party, will be made except by written agreement of both parties via the change order procedures (Appendix B, Section III). Any change affecting time or dollars must be processed as a change order.

(c) Any changes agreed to having an incremental or decremental effect on the scope of the Company's services will be set forth as amendments to Appendices B and C annexed hereto or a modification to Appendix A annexed hereto.

(d) Any project delay caused by software, provided by the University as outlined in Appendix C, Notre Dame Vendor Standards, which does not perform according to published specifications for that software.

(Ma/NotD/72)

I. H. SCOPE OF CONTRACT COMMITMENTS

This section outlines the purposes of the agreement and the work which will be done, and lists the complete set of attachments or documents which compose the agreement. In attached specifications, more detailed descriptions of the scope of the contract are properly included.

SAMPLE PROVISION

Scope of Contract Commitments I-H

The Company agrees to develop, test, document and deliver to the University an automated accounting system for the University in accordance with the specifications hereto annexed and made a part hereof as Appendix A, the Company's proposal hereto annexed and made Appendix B, and Appendix C, Notre Dame Vendor Standards. The system as set forth in Appendix A is hereinafter called the "System".

The Company agrees to use its best efforts to complete various phases of the System in accordance with the schedule hereto annexed and made a part hereof as Appendix B, Section V, as submitted December 27, 1971.

This Agreement and Appendices A through C inclusive, attached hereto, constitute the entire agreement and understanding between the parties.

In case any one or more of the provisions contained in this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

The headings of the sections of this Agreement constitute no part of the Agreement between the parties, having been inserted for convenience only.

(Ma/NotD/72)

I. I. SPECIFICATIONS

Tasks to be accomplished by the software development form should be described in this section. Specifications can include a wide variety of descriptive terms but one category of description, data security, should be called out for special attention. Adequate security measures against unauthorized disclosure of data should be required for: test data used for development of the system; and for data to be used when the system is operating. For a sample provision for security of test data see Section II-L, Protection and security, test data. The sample provision below provides for security of data in the completed system. Other specifications for the software package to be developed should include a wide variety of terms. A list of some types of terms is reproduced below in place of a sample provision for I-I(b). The exact wording of a provision governing specifications will depend almost entirely upon the nature of the software being developed and the type of data which it will manipulate. Additional provisions in Appendix c illustrate specifications developed for particular software packages.

SAMPLE PROVISION

Specifications, data security I-I(a)

The Total Integrated Information System must: Provide adequate security against unauthorized disclosure of damage to, or tampering with information.

(SCT/EIS/72)

SAMPLE PROVISION

Specifications, other items I-I(b)

The material we should supply in order to allow a vendor to prepare a bid specification could be grouped under the general heading of "Systems Requirement Specifications". This should contain:

1) A statement/definition of the overall system objectives.

2) Detailed requirements of the system in terms of functional requirements (transactions). These detailed requirements should include:

   a) a narrative description of the transaction,

   b) the data flow and/or data elements used by the transaction,

   c) the performance criteria for the transaction,

   d) the type of user interface to the transaction; i.e., message standards and conventions,

   e) the editing rules for the transaction.

3) Examples of the documentation we would require for the programs and systems that are developed. (Some of this could be extracted from the DSC Computer Standards Manual).

4) The installation objectives; that is, the overall installation plan that we would expect relative to the design, testing and acceptance of the system.

5) The manpower support we will commit to the project, both in terms of systems analyst and user support.

(X/U Mich/74)

I. J. Term

Although a detailed schedule should be set forth in a different portion of the contract, a general provision regarding term of the agreement is useful. The sample provision below keys the beginning of the term to the date of signing of the agreement and repeats the requirement that all services described in the agreement be completed within six months from the date of commencement. An alternative form, with specific dates for each stage of software development, is shown in Appendix D.

SAMPLE PROVISION

Term I-J

The CONSULTANT shall commence performance of the Scope of Services within fourteen calendar days of the date affixed hereon and shall complete said Scope of Services six months from the date of commencement.

If the CONSULTANT shall be delayed in the performance of the work from any cause clearly beyond his control, he may, upon written application to the DIVISION as soon as such delay becomes apparent and before the latest approved completion date of the PROJECT, be granted such extension of time of performance as the DIVISION shall deem just and equitable, and the granting of such extension shall be in writing.

(SRG/MSCS/72)

II. SOFTWARE DEVELOPMENT AND ACCEPTANCE

Clauses gathered together in this section govern activities of the software development firm and responsibilities of the contracting university during the time of development of the software, delivery to the customer and installation. Although some of the provisions and remedies relate to the agreement as a whole, the primary purpose of each of them is to regulate the activities of the contracting parties rather than to affect the agreement itself.

II. A. ACCEPTANCE

Acceptance of a software package is best given in stages as various portions of the custom software package are developed. The sample provision below is particularly good because it illustrates the step by step acceptance of units of the system and requires that a final system test be conducted by the university staff.

If possible, clauses which specify standards of acceptance should also be included in the contract. The II-A(b) sample provision below outlines minimum standards of acceptance. More detailed requirements, including specified times for the running of bench mark jobs should also be included, but clauses of this nature are quite specific to the software package. No sample clauses of this nature have been submitted.

SAMPLE PROVISION

Acceptance Procedure II-A(a)

The System shall be delivered as milestones are completed throughout the term of the project leading to final acceptance of the System when the Company has performed all the work described in Appendix A and delineated in Appendix B and C. Approval of each milestone, constituting partial but conditional acceptance by the University, will occur on three levels as follows:

(1) Approval of each milestone in the System as a separate entity, including program specification review and coding completion. Such approval is conditional upon satisfactory performance of the Unit Test and System Test as described hereinafter in Paragraph 10.3.

(2) Approval of performance of the System based on the results of unit testing using test data supplied by the University and on the results of integrated systems testing while operated by Company personnel using actual files and data supplied by the University, at Notre Dame or an off-site facility.

(3) Final acceptance of the System will be based on satisfactory System Test using the same data in Paragraph 10.2 at the University Computing Center. Such operation is to be performed by University personnel using the completed documentation furnished by the Company.

(Ma/NotD/72)

SAMPLE PROVISION

Acceptance Procedure II-A(a)

SCT shall thoroughly test the system to the following levels:

Preliminary

Correction of compilation and logic errors in each program. Checking all processing paths for both normal and reasonable sets of abnormal data. Source code on direct access libraries shall be used.

Module

Integration of individual programs into jobs. Each module shall be thoroughly exercised, with data supplied by DHE. Catalogued procedures and load module libraries shall be used. Data exchanges between programs within a module and between modules within the system shall be written.

The DHE shall thoroughly test the system to the following level: All processing paths in each program in the context of job configurations and system design shall successfully execute. A unified set of live data shall be used. The test shall be conducted by regular remote and local operating staff without assistance by SCT staff. The criteria of acceptance (Section 5) shall be met.

Adequate procedures and forms for control of testing shall be developed. Records of all tests shall be kept by the contractor including:

A. Date, type, purpose of test

B. Summary of results

C. Test data

SCT shall notify DHE at least two (2) days in advance of the commencement of tests for levels 4.1 and 4.2. DHE has the right to send a representative to observe testing.

(SCT/EIS/72)

SAMPLE REMEDY

Acceptance Procedure II-A(a)

After successful completion of the acceptance procedure, it shall be considered that SCT has furnished the specified outputs. Whenever the word "furnish" is used it shall mean:

> The presentation to DHE of operational programs on the designated prime computer test site (Rutgers, CCIS). Upon presentation of the program, DHE shall have three (3) weeks to certify the operational capabilities of the program using system test data, supplied by DHE. DHE is obligated to inform SCT, in writing, of any operational failure of the furnished programs within the specified three-week period. The programs shall be considered furnished, if at the end of the three-week period, no written notice of operational failure is received by SCT or written notice of acceptance has been sent to SCT by DHE. If failures are transmitted, there will be an additional two (2) cycles of 2 weeks of similar periods.
>
> Upon presentation of the documentation DHE shall have three (3) weeks to certify the completeness and accuracy of the documentation. DHE is obligated to inform SCT, in writing, of any omissions or inaccuracies within the specified three-week period. The documentation shall be considered furnished, if at the end of the three-week period, no written notice is received by SCT or written notice of acceptance has been sent to SCT by DHE. If comments are transmitted, there will be an additional two (2) cycles of two weeks of similar periods.
>
> It is understood that no documentation will be put in a production status until the completion of Section 5.0.

(SCT/EIS/72)

SAMPLE PROVISION

Acceptance, Standards of II-A(b)

At a minimum, the CUSTOM modifications shall meet the following performance requirements:

Data Volumes Capability. The CUSTOM system as modified shall not decrease the existing data volume capability of CUSTOM.

Processing Time. SCT will employ all reasonable efforts within the existing design structure of all programs to ensure minimal operating times and system resources. DHE will make available up to three (3) man days of systems programmer consulting effort to assist SCT in achieving this goal. SCT/DHE will agree in writing on any and all design structure changes. All resources to implement such design structure changes will be taken from Task 4 monies, if sufficient.

Programming Standards. SCT shall employ all reasonable effort to ensure that CUSTOM modifications conform to mutually agreed upon programming standards. Exceptions shall be authorized in writing by DHE. Within fifteen (15) days of the initiation of this contract, SCT will submit to DHE for approval a set of programming standards to include by way of illustration, but not limited to:

1) Program Design Rules

   e.g. Modularity, branching restrictions

2) Coding Conventions

   e.g. Block contains 0 Records

3) Program Modification Rules

4) JCL Coding

5) Production Control Messages

   format and content

6) Error Messages

   format and content

7) Processing System:

   SCT shall provide all reasonable efforts within modifications made to CUSTOM to avoid the use of decimal arithmetic instructions.

8) SCT shall use existing software or standard utilities in lieu of customized coding whenever feasible.

9) The following COBOL language features are prohibited from use:

   1) Report Writer

   2) Sort Verb.

10) All files except unit record will be labeled.

The CUSTOM Modules shall produce identical outputs when run with identical input.

The CUSTOM system modifications will not alter existing file integrity capabilities presently within the CUSTOM system.

The CUSTOM modifications shall provide for existing controls of data input, processing and all Master Files, except where specified in Attachment I or II. Within the CUSTOM modifications, SCT shall provide all reasonable efforts to include provisions for positive control totals and procedures at each major processing step.

(SCT/EIS/72)

II. B. CONTROL

This section of the contract should outline the procedures through which the contracting institution can maintain administrative and financial control over the software development. Normally, reports are required at certain time intervals on progress of work. Reports include statement of projects due during the time period covered, as well as a statement of work completed. The sample provision shown below is noteworthy because of the detailed description of items to be included in weekly and monthly progress reports as well as provision for adjustment in project work if necessary.

In the event that work does not meet the approval of the contracting institution when weekly and monthly reports are reviewed, it is possible to require that the software development firm redo the work until it is acceptable. Such a requirement was utilized by the Massachusetts State College System in its initial contract for development for a statewide master plan for computing. It may be desirable to also require special authorization of additional time and staff effort for accomplishment of the work not completed during the prescribed time. An example of such a work authorization is also included in Appendix d.

SAMPLE PROVISION

Control II-B

The Company shall submit to the University written progress reports on a monthly basis which shall contain the following:

(a) A statement of a percentage of completion of each program itemized in Appendix B, Section V.

(b) A statement of any and all significant problems encountered and a statement of the solution or proposed solution to such problems.

(c) A statement of projects due for completion within the reporting period.

(d) A statement of items requiring renegotiation of any work, terms and/or conditions of this Agreement.

(e) As an attachment, all documentation related to completion and acceptance of any phase within the report period, unless previously delivered within the period.

Weekly project review meetings will be conducted by the Company's project manager with the University personnel designated by the University's contract officer. The Company's project manager will prepare minutes of these weekly meetings. The weekly minutes will include:

(a) Work accomplished during the week;

(b) Work to be accomplished during the coming week; and

(c) Problems encountered during the current week and suggested solutions thereto.

The weekly meeting minutes will be signed by the Company's project manager and the University official designated by the University's contract officer.

In the event of a problem which, in the opinion of the Company's or of the University's project manager, is sufficiently serious to either delay completion of a project as scheduled or affect the agreed price of this Agreement and/or any revisions to this Agreement, the Company shall report this condition in writing within seven (7) days to the University's contract officer or his designee.

(Ma/NotD/72)

SAMPLE REMEDY

Control II-B

The Company will submit monthly installment invoices to the University contemporaneously with the monthly progress report. If an invoice is received prior to the monthly progress report, that invoice will not be paid until the above progress report is received.

(Ma/NotD/72)

SAMPLE REMEDY

Control II-B

The CONSULTANT shall perform the activities described in ARTICLE III, Section A, paragraph 6, above as often as is necessary to meet the approval of the DIVISION. Such approval will be given, in writing, by the DIVISION when such Master Plan is satisfactory and acceptable to the MSCS. Only when such approval has been formally given to the CONSULTANT by the DIVISION may the CONSULTANT prepare final versions of the Master Plan for distribution to the MSCS, as specified in ARTICLE III, Section C. The CONSULTANT shall prepare for and hold review sessions with any representatives of the MSCS, should such session be deemed necessary by the DIVISION.

(SRG/MSCS/72)

II.C. CUSTOMER SERVICES

Services provided by the contracting institution for the development of a software package include: provision of facilities such as computer time, materials and office space; provision of information including test data; and provision of staff services including key punching, secretarial and even programmer time. It is possible to make only a general reference to such services in the contract and include an attachment which itemizes the specific facilities and personnel to be allocated to the software development project. This procedure was employed by the California State University in a standard contract for software development. Another alternative is to describe in some detail in the contract the facilities, information and staff services to be provided. Two sample provisions shown below follow this pattern. Customer services are normally provided at no charge to the software development firm and often result in a lower price for the finished package.

SAMPLE PROVISION

Customer services, facilities II-C(a)

DHE shall provide all computer test time in support of the activities listed in Section 2 as follows:

(a) Prime source of test time is CCIS at Rutgers University.

(b) Jobs will be submitted for testing according to normal CCIS procedures, as defined in CCIS User's Manual. Specifically, remote job submission is encouraged. Card decks may be submitted over the counter. The CCIS Computer Room is a secured area accessible only to authorized personnel.

(c) DHE Project Manager has responsibility for all decisions regarding job execution priorities and approval of any special requests SCT may make. SCT shall notify DHE Project Manager of all requests for computer time on a 48 hour notification. If for any reason, time should not be available at CCIS for a period of 48 hours or more, the Computer Center at Princeton University shall as the first alternative be requested to make available computer test time.

DHE shall provide computer materials required to perform the activities listed in Section 2 including, but not limited to 3, 2314 or equivalent disk packs, 6, 2400 foot magnetic tape reels, sufficient online storage for source modules, printer paper, card stock and other items.

DHE shall make available to SCT computer time and the use of computer program(s) to generate flow charts. This facility shall be made available within two weeks of the receipt of a written request from SCT.

DHE shall provide adequate office space and facilities at a convenient location.

(SCT/EIS/72)

SAMPLE PROVISION

Customer Services, information II-C(b)

The State is responsible for providing required information, data, documentation, and test data to facilitate the Contractor's performance of the work, and will provide such additional assistance and services as is specifically set forth in the various Task Schedules.

(X/CalStU/73)

SAMPLE PROVISION

Customer Services, staff services II-C(c)

The following services are to be provided to the Company by the University at no cost to the Company:

1. Secretarial services required to type and reproduce required documentation for project administration.

2. Keypunching services, including both operator and machine, to prepare test data, and conversion data.

3. Clerical effort associated with the conversion and acquisition of missing data, as well as the correction of any data deemed incorrect during the conversion.

4. Clerical effort and materials associated with the preparation and approval of any test data processed during the testing phase, such as magnetic tapes and disk packs, librarian services, etc.

5. Machine test time and associated materials, including operators, as described in Appendix B, Section V, hereto annexed and made a part hereof, on the University's premises or at a suitable off-site location.

(Ma/NotD/72)

II. D. CONSULTING SERVICES

While one custom software package is being developed, it may be desirable to utilize the expertise of company representatives present at the user's site to assist in resolution of related problems. A brief clause outlining related problems and the commitment of the company to provide consulting services for a negotiated fee will lay the groundwork for future negotiation between the parties concerning the additional services.

SAMPLE PROVISION

Consulting Services II-D

SCT personnel, upon written authorization and work plan from DHE, will provide on-site consulting services to include, by way of illustration, but not limited to:

1) Admissions specifications;
2) Specification of additional management reports;
3) Consulting on college student processing, organization, and procedures;
4) Specification of interface requirements between custom and other information systems (i.e. EFIS).
5) Specification of billing and/or financial data in the Student Data Base.

(SCT/EIS/72)

II. E. DOCUMENTATION

As with leased and purchased software packages, it is essential that the documentation for a custom software package meet the approval of the buying institution. The sample provisions below outline requirements for documentation composition and delivery.

Because it puts in contractual form the promises of correction and assistance that are often made in sales promotions (but which are seldom carried through), the sample remedy outlined below is most useful. Another remedy to correct documentation is to require that the buying institution prepare the final version based on a draft submitted by the company. This alternative is illustrated in Appendix d.

SAMPLE PROVISION

Documentation, delivery II-E(a)

The Company shall deliver to the University, four (4) weeks prior to final acceptance of the System, complete material necessary to operate and maintain the System. This material shall include all flow charts, print layouts, input, output and display formats, transaction code descriptions, user materials, test materials, reports, programs, systems manuals, tape listings, data, object decks, source listings and source decks, program packages and modifications thereof.

(Ma/NotD/72)

SAMPLE PROVISION

Documentation, specifications II-E(b)

As part of the documentation described above the Company will deliver the following manuals to the University:

System Documentation - (Two manuals to be delivered)

- Overview of the System
- System Flow Chart
- Concise Statement of Objective for each program or segment in the System
- Sample of all reports and display formats
- Record Layouts

Program Documentation - (Two manuals to be delivered for each job stream)

- Cover Sheet
- Statement of Objective
- Revision Chart
- Top Level Flow Chart
- Processing Narrative
- Logic Flow Chart
- Applicable Record Layouts, Report and Display Formats

Operations Documentation - (Two manuals to be delivered)

- System Flow Chart
- Required Job Control Parameters
- Operator Messages and Actions
- Devices and Files Used

The Company and the University agree that these will be consistent with Section III, Subsections: System Documentation, Programming Documentation, Operations Documentation of the Vendors Standards Manual hereto annexed as Appendix C. The subsection: Users Documentation, Items A, B, C, E and F are included in the System, Program and Operations documentation and will be extractible for inclusion in a user manual. Item D will not be provided by the Company.

(Ma/NotD/72)

SAMPLE REMEDY

Documentation, specifications II-E(b)

The University must agree that the documentation is in accordance with the documentation standards established in Appendix C, Notre Dame Vendor Standards, within two (2) weeks (of delivery). The Company agrees to correct promptly any defects or deficiencies consistent with the warranty agreement described in Paragraph 12 (A).

II. F. LIABILITY

The software development firm is unlikely to assume liability for more than damage to persons or property occurring during performance of the contract and for patent or copyright infringement. See sample clauses below for typical provisions covering general liability. See Section II-H for clauses regarding copyright infringement. It would be to the benefit of the institutional buyer to omit from the contract clauses specifically prohibiting suits for consequential damages. However, the sample provision and additional provisions which

have been submitted for this document do not illustrate such omissions.

SAMPLE PROVISION

Liability, limitation of II-F

The Contractor shall be relieved from liability with respect to the performance of work as outlined in each Task Schedule when the State agrees the Task Schedule has been satisfactorily completed.

Except for liability for injury to persons or damage to tangible property, the Contractor will be liable for damages only to the extent of the maximum amount of this Agreement as stated in Article 11.

THE CONTRACTOR WILL NOT BE LIABLE FOR CONSEQUENTIAL DAMAGES EVEN IF THE CONTRACTOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

NOTWITHSTANDING THE FOREGOING, NOTHING CONTAINED HEREIN SHALL LIMIT CONTRACTOR'S LIABILITY FOR PERSONAL INJURY AND DAMAGE TO TANGIBLE PROPERTY CAUSED BY CONTRACTOR'S NEGLIGENCE OR TORTIOUS ACT.

Neither party to this Agreement shall be liable for damages resulting from delayed or defective performance when such delays arise out of causes beyond the control and without the fault or negligence of the offending party. Such causes may include, but are not restricted to, Acts of God or of the public enemy, acts of the State in its sovereign capacity, fires, floods, power failure, disabling strikes, epidemics, quarantine restrictions, and freight embargoes.

(X/Cal St U/73)

II. G. MAINTENANCE

Continuing maintenance for a custom software package is usually provided for a fee to be negotiated. One exception to this occurs in an agreement for a custom software modification where maintenance to the end of the calendar year following completion of the system modification was guaranteed. Payment for such maintenance services would be taken out of monies which might be otherwise applied by the buying institution for related consulting services.

SAMPLE PROVISION

Maintenance II-G

SCT will maintain the system detailed in this document against all program failures through December 31, 1972. All program failures will be transmitted through DHE to SCT via existing DHE established procedures. DHE and SCT reserve the right to use up to ten (10) days of Task 3 effort to support the task. Additional efforts, if required, will apply Task 4 monies.

(SCT/EIS/72)

II. H. PATENT AND COPYRIGHT

In the sample provision below and in an additional provision in Appendix d the right of the institution to copyright, patent or otherwise use the developed software has been clearly set forth. One additional benefit to the buying institution has been included in the first sample provision below. The software development company agrees to "render all reasonably required assistance" to the buying institution to protect the copyright of the institution during the term of the agreement and for a period of one month thereafter.

It is customary for the software development firm to indemnify the customer should any suit be brought for copyright or patent infringement in the case of custom software as in the case of leased or purchased software. A sample provision illustrating this aspect of the contract is shown below.

SAMPLE PROVISION

Copyright, rights II-H(a)

The Company shall promptly and fully disclose to the University the product of the Company's work hereunder and, upon final payment to the Company, whether the amount in full, or in accordance with Section 9, such material shall be deemed to be work made for hire belonging exclusively to the University, with the University having the right to obtain and to hold in its own name copyrights, registrations or such other protection as may be appropriate to the subject matter, and any extension or renewals thereof. The Company agrees to render all reasonably required assistance to the University to perfect the rights hereinabove described during the term of this Agreement and for a period of one (1) month thereafter.

(Ma/NotD/72)

SAMPLE PROVISION

Patent and Copyright Indemnity II-H(b)

If notified promptly in writing of any action brought or threatened against the Customer the Company will defend at its expense any action brought against the Customer to the extent that it is based on a claim that custom software developed for the Customer as part of this agreement, is an infringement upon a copyright in the United States or a United States patent and subject to the limitation of liability stated herein, the Company will pay any costs, damages, and attorney fees finally awarded against the Customer in such action which are attributable to such claims, providing the Company has been allowed to fully participate in the defense and/or agrees to any settlement of such claim. Should the Company determine developed programs are likely to become the subject of a claim of infringement of a copyright or patent, the Company may procure, at the Company's expense, for the Customer, the right to continue using the programs or to replace or modify them to make them non-infringing. (Y/U Mich/74)

II. I. PAYMENT PROCEDURE

Because disputes can often arise over delays in payment or withholding of approval for payment, it is wise to set forth a specific payment procedure. The procedure outlined in the sample provision below is beneficial to the university in that it limits the additional funds to be expended for unanticipated work. No more than 10% of the contract fee can be paid for unanticipated work and the contract officer must approve such work for payment. Although such approval is normally required, if it is not mentioned in the contract, the time necessary for obtaining such approval could provoke disagreements at a later date.

As in the case of purchased and leased software, withholding a payment can be used as a remedy for work not performed or which does not meet standards of acceptance of the buyer. See also Section II-K(c) Prices, limit and Section II-B Control.

SAMPLE PROVISION

Payment procedure II-I

During the execution of each Task Schedule which involves the delivery to the State of identified deliverable items, the Contractor may submit periodically to the State invoices reflecting a pro-rata cost of the task schedules, determined on the basis of the lesser of either:

(1) the number of deliverables provided to the State divided by the total number of deliverables required to be delivered to the State, less 25%, less any amounts previously invoiced; or

(2) the number of man-hours expended by the Contractor in the performance of the task divided by the number of man-hours scheduled for the task, less 25%, less any amounts previously invoiced.

For those Task Schedules which do not involve delivery to the State of identified deliverable items, but which are of a continuing nature, the Contractor may submit invoices reflecting a pro-rata cost of the Task

Schedule, less 25%, less any amount previously invoiced. Actual progress payment amounts, for such Task Schedules, must be based on at least equivalent services rendered and, to the extent practicable, will be keyed to clearly identifiable stages of progress as reflected in written reports submitted with the invoices.

Upon completion of a Task Schedule to the satisfaction of the State, the full charge for such Task Schedule, less amounts previously invoiced to the State in accordance with paragraphs 9.b. or 9.c. above, may be submitted for payment.

In the event that unanticipated work is performed, invoices for services as reflected on Work Authorizations will be submitted to the State for payment. The Contractor will invoice the State monthly for the man-hours expended in each Work Authorization for the preceding month. Each such invoice shall reflect the number of hours worked by each classification of Contractor personnel and the applicable billing rates. In no event shall the total amount paid for such unanticipated work exceed 10% of the total amount of this agreement.

Invoices prepared in accordance with paragraphs 9.b., c., d., and e. above, will not be submitted more frequently than monthly to the State.

The State shall make payment to the Contractor as promptly as fiscal procedures permit, for performance under this Agreement in accordance with applicable completion criteria as accepted by the State and in accordance with invoices submitted.

(X/Cal St U/73)

SAMPLE REMEDY

Payment procedure II-I

In the aggregate, invoices reflecting progress payments will not exceed 75% of the ceiling amount of the agreement, with the balance to be invoiced upon satisfactory completion of the Agreement.

(X/Cal St U/73)

II. J. PERSONNEL

In this section, it is important to set forth not only who shall represent the company and the buying institution during the months required for the development of the custom software, but also to provide for remedies for the university or the company in the event that either is dissatisfied with the performance of the representative of the other. The sample provision and remedy shown below outline in sufficient detail, the conditions under which a change in personnel can be requested and the procedures for making such a request. The sample provision also includes a description of the conditions under which substitute personnel could be provided by the company without request by the institution. Additional example clauses follow the same pattern.

SAMPLE PROVISION

Personnel II-J

It has been agreed that _____ shall act as project manager for the Company in the development of the System, but the University may at any time and in its sole and absolute discretion request his removal. In such event, a successor project manager acceptable to the University shall be appointed, to serve under the same condition.

In the event that , or any successor to him as project manager, or any individuals assigned to the project by the Company, should leave the Company's employ or become incapacitated or unable for any reason to perform his appointed duties for development of the System, the Company may and will replace him with a qualified successor, acceptable to the Univeristy. Should the Company, for any reason other than termination of task, voluntarily or involuntarily remove a person from the task, the Company will provide a replacement suitable to the University.

During the term of this Agreement and for a period of 12 months thereafter, it is mutually agreed that the Universi will not hire any of the Company's employees assigned to the effort being performed hereunder and, conversely, the Company will not hire any of the University's employees; provided however, that employees voluntarily released by the Company or the University may be hired by the other.

(Ma/NotD/72)

SAMPLE REMEDY

Personnel II-J

The University retains the right to require the Company to replace any member of the project team working on or off the University premises whom the University may determine in its reasonable discretion is unfit or otherwise unsatisfactory.

(Ma/NotD/72)

II. K. PRICES

In addition to a general description of the price, clauses may be included regarding a change in price under specific conditions. A change in price is normally justified by a change in the work authorization for the project. Provision for an estimate of the price of additional services is a normal requirement. Another type of clause used by several of the institutions who submitted contracts for this volume limits the total price to be paid for software development work. The sample provision for II-K(b) below is a brief statement to this effect. Additional provisions included in the Appendix d illustrate in more detail the limitations which can be placed on particular services and on additional services to be contracted at a later date.

It is customary for the buying institution to reimburse staff of the software development company for travel and associated costs required for completion of the software development and implementation. Commitment to pay for these costs can be set forth as in the sample provision below, II-K(d). See also I-G Change in Agreement.

SAMPLE PROVISION

Prices, general II-K(a)

Total man-day charges shall equal the total license fee specified in section 9.1 a and 9.1 b.

(SCT/EIS/72)

SAMPLE PROVISION

Prices, change II-K(b)

Should the Customer desire to change items within the system specifications, during the development of programs under this agreement, the Company will provide an estimate of time required to make the change along with the rate charged for each classification of Company personnel working on Customer software changes.

(Y/U Mich/74)

SAMPLE PROVISION

Prices, limit II-K(c)

The CONSULTANT agrees that he shall perform the complete scope of Services as enumerated herein and that he shall not hold the DIVISION liable for costs incurred in excess of $72,000 for the complete performance of the Scope of Services.

In no event shall the DIVISION be liable for any sum in excess of $72,000 on account of any provision of this contract or any action taken by DIVISION in relation thereto.

(SRG/MSCS/72)

SAMPLE PROVISION

Prices, travel and associated costs II-K(d)

Travel and lodging expenses as incurred from the Company's principal place of business to the University which are consistent with the performance of the development and implementation of the System.

(Ma/NotD/72)

II. L. PROTECTION AND SECURITY

Clauses relating to the protection and security of data and technical information ought to be included in a contract for software development. The sample provision below regarding security of data is a standard format which could be used in almost any kind of contract for software development.

The sample provision for protection and security of technical information will vary depending upon the nature of the software development work being contracted. In a style somewhat different from many contracts, the sample provision II-L(b) below describes the technical information related to software development in terms of the concept rather than copies of system modification code.

SAMPLE PROVISION

Protection and Security, data II-L(a)

Any reports, information, data, etc., given to or prepared or assembled by the CONSULTANT under this Contract which the DIVISION request to be kept as confidential shall not be made available to any individual or organization by the CONSULTANT without prior written approval from the DIVISION.

(SRG/MSCS/72)

SAMPLE PROVISION

Protection and Security, technical information II-L(b)

The CUSTOM Modifications and Documentation furnished pursuant to this Contract are, and shall be treated as such by the parties hereto as, Confidential Business Information intended for use solely by the State of New Jersey/DHE and Systems & Computer Technology Corporation.

The State/DHE and any New Jersey public or private educational institutions, and the ECC or its successor, agrees not to furnish any information which would disclose anything more than the concepts and theory of the CUSTOM System, or which would enable any other person, firm, corporation or institutions to develop, duplicate or otherwise utilize the CUSTOM System, CUSTOM modifications or documentation.

If the State/DHE and any New Jersey public or private educational institutions, and the ECC or its successor, contracts with any person, firm, corporation or institution for any computer equipment or services relating to the CUSTOM System or CUSTOM Modifications, it shall require that such contracting agent undertake in writing not to use, sell or market or otherwise disclose such information concerning the CUSTOM System or CUSTOM modifications which would enable any person, firm, corporation or institution to develop, duplicate or otherwise utilize the CUSTOM System or CUSTOM modifications.

The use of the CUSTOM Modifications and Documentation by the State of New Jersey/DHE shall mean the use by any public or private educational institution, the ECC or its successor, within the State of New Jersey. The use of Custom Modifications and Documentation by Systems & Computer Technology Corporation shall mean use for any business purpose which does not interfere with or infringe upon the use of the CUSTOM Modifications by the State of New Jersey.

(SCT/EIS/72)

II. M. SCHEDULE

The schedule for work to be completed in developing a software package can be set forth in detail in the contract, or beginning and ending dates can be set and a detailed plan of work required. Such a plan should include dates for the completion of various phases of the software and documentation to be developed.

Remedies for the delay or failure of the company to meet the schedule outlined in the contract are limited in the sample clauses to the authorization of additional work following review of the progress to date. In all cases if the delay is attributable to failure of the contracting institution to provide facilities, information or other materials, the contracting institution cannot hold the company liable for the delay.

Although no sample clauses are available to illustrate penalties for extreme delay in the work schedule, penalties can also be applied by the company for university failure to meet a schedule. In the clause below, payment must be made to Company personnel at the billable rate for waiting time when the university computer is not available. Because the penalty is applied against the contracting institution, this clause is included in the Appendix d rather than as a sample penalty in the text.

SAMPLE PROVISION

Schedule II-M

The CONSULTANT shall prepare a detailed Plan of Work (detailing responsibilities for work to be performed by the CONSULTANT and by the DIVISION, setting dates for the completion of various phases of the PROJECT, and specifying documentation to be completed, as well as scheduling other necessary activities) within ten working days of the date of commencement, said Plan of Work to be submitted in writing to the DIVISION for written approval.

The DIVISION shall take appropriate and reasonable action to insure that the activities, as scheduled in the approved Plan of Work, will proceed as scheduled. The DIVISION shall not hold the CONSULTANT liable for any delays in the execution of the Plan of Work if such delays result from any action or lack thereof on the part of the DIVISION or the MSCS.

(SRG/MSCS/72)

SAMPLE REMEDY

Schedule II-M

Delay or failure by the State to fulfill the above described responsibilities, such that the Contractor is prevented from performing in accordance with the applicable Task Schedules, may result in additional costs to the State and deviations from previously agreed upon work schedules. In this event, the State and the Contractor will initiate one or more Work Authorizations, as described in Article 8. Should the Contractor determine that a delay exists, or is probable due to failure of the State, the Contractor will notify the State in writing immediately.

(X/Cal St U/73)

II. N. STORAGE MEDIA

It is wise to include in the contract a specific description of the storage media on which the custom software package will be delivered. No specific clause to this effect was submitted for inclusion in the volume. However, a clause describing the complete materials necessary to operate and maintain the system and all individual programs comprising the system includes a reference to storage media. Since this clause is not directly on point with this type of provision, it is included in the Appendix rather than in the text as a sample clause.

See also section II-E(a) Documentation, Delivery and section II-E(b) Documentation, Specifications as well as clauses governing storage media in part 1 of this volume.

II. O. SUPERVISION

Clauses governing supervision of project work differ from those describing personnel and control of the project primarily in degree of detail. The clauses governing supervision appoint specific individuals to supervise the project for the duration of software development, and list specific items which each party to the contract will be responsible for supervising.

SAMPLE PROVISION

Supervision II-O

Supervision by the Division. The provision of consulting services, research, advice and assistance by the CONSULTANT shall be subject to the general supervision and approval of the Provost-Director, acting for the DIVISION, in behalf of the Board of Trustees of State Colleges or to any duly appointed representative of the DIVISION.

CONSULTANT'S Personnel. The activities of the CONSULTANT shall be under the general direction of Dr. Jack B. Levine, principal of the Systems Research Group.

(SRG/MSCS/72)

II. P. TAXES

Clauses governing taxes for custom software development are virtually the same as those used in contracts for packaged software. It is customary for the contracting institution to pay applicable sales or use taxes.

SAMPLE PROVISION

Taxes II-P

The State shall pay to the Contractor any California State and local sales/use taxes on the personal services provided pursuant to this Agreement.

(X/Cal St U/73)

II. Q. TITLE

Because the contracting institution is paying for development of the custom software, that institution usually retains title to all systems and associated programs including all written materials and documentation. As with copyright provisions, title to the expression of the ideas embodied in the software is held rather than to the ideas themselves. The last paragraph of the sample provision illustrates this point. The company reserves the right to use the technical knowledge developed during the performance of the agreement.

SAMPLE PROVISION

Title II-Q

All written materials, including computer programs, card decks, tapes, listings and other documentation originated and prepared for the University by the Company pursuant to this Agreement, as well as the completed System, shall belong exclusively to the University. The Company agrees to safeguard the confidential nature of the completed System as well as all information furnished by the University in pursuit of the objectives of this Agreement.

The Company reserves the right to use the technical knowledge developed by the Company in the performance of this Agreement.

(Ma/NotD/72)

II. R. TRAINING

It is very likely that university personnel will have to be trained in the use of the package once it is developed. Training can be included in the purchase price of the package, but it is normally contracted on a separate basis with fees to be determined in future negotiations or through a schedule incorporated into a work authorization. The sample provision below refers to such a work authorization.

SAMPLE PROVISION

Training II-R

SCT personnel, upon written authorization and work plan from DHE, will provide on-site consulting services to train DHE and/or their appointed representative in the use of the modified CUSTOM modules and to assist ECC and State College personnel in the installation of the CUSTOM Modules.

(SCT/EIS/72)

II. S. WARRANTY

The warranty section of the contract should include a commitment by the company to provide software which meets the specifications outlined in the contract and in any attachments. If additional work is necessary beyond the acceptance stage to render the software package acceptable, such additional work should be done without charge to the contracting univeristy. The sample provision and remedy outlined below are taken from a Notre Dame University contract which is particularly effective in this regard.

SAMPLE PROVISION

Warranty II-S

The Company warrants that at the time of final acceptance of the System by the University the System will perform in accordance with the requirements set forth in the specifications contained in Appendix A hereto annexed. The Company agrees to correct promptly any defects or deficiencies of which the Company is notified by the University. The warranty period for the System, excepting year-end reports, will be from July 1, 1972 to October 31, 1972, or four months from final acceptance as described in Paragraph 10.3, whichever is later. The Company warrants the year-end reports from July 1, 1973 to August 31, 1973. Both warranty periods will take effect without any charge or expense to the University.

The Company warrants that in developing the System and its documentation the Company will not plagiarize work to which any other person has proprietary rights, to the end that the System and its documentation shall be an original and unique work, the delivery of which to the University and the subsequent use of which by the University shall not infringe any proprietary rights of any person to the knowledge of the Company.

(Ma/NotD/72)

SAMPLE REMEDY

Warranty II-S

If investigations of alleged deficiencies or defects discloses that they are not in fact within the requirements set forth in the aforesaid specifications, such investigative effort and any programming changes performed by the Company to correct such alleged deficiencies or defects will be charged to the University at the Company's hourly rate schedule then in existence plus expenses for travel and lodging. The remedy provided herein shall be exclusive of any other remedy available to the University at law or in equity.

(Ma/NotD/72)

ADDITIONAL EXAMPLE CLAUSES

PART 1: SOFTWARE PACKAGES

I.1. SCOPE OF CONTRACT COMMITMENTS

SAMPLE PROVISION

Scope of Contract Commitments I - 1

The Regents of the University of California (University and International Business Machines Corporation (IBM) agree that the following terms and conditions shall govern all cases when the University leases program products. Except as provided in Article XV, Purchase Orders issued for Program Products will incorporate these terms by reference and will incorporate the applicable IBM Program Products List and shall be subject to review and acceptance by IBM before IBM shall be obligated to perform.

IBM grants a non-transferrable and non-exclusive license to use the Program Products, including basic material (together referred to as licensed programs) and related optional materials (optional materials) which are ordered from time to time by the University.

(IBM/UCal/78)

SAMPLE PROVISION

Scope of Contract Commitments I - 1

The University's and IBM's remedies in this agreement are exclusive.

(IBM/UCal/78)

SAMPLE PROVISION

Scope of Contract Commitments I - 1

Any written commitment by a contractor within the scope of the contract shall be binding upon the contractor whether or not incorporated into a delivery order. Failure of the contractor to fulfill any such commitment shall render the contractor liable for liquidated or other damages due the Government under the terms of this contract.

For the purpose of this contract a commitment by a contractor includes (1) price and options committed to remain in force over a specified period(s) of time, (2) any warranty or representation made by the contractor in a proposal as to hardware or software performance, any other physical design or functional characteristics of a machine, software package or system, (3) any warranty or representation made by a contractor concerning the characteristics or items described in (2) above made in any literature, descriptions, drawings or specifications accompanying or referred to in a proposal, (4) any modification of or affirmation or representation as to the above which is made by a contractor in or during the course of negotiations whether or not incorporated into a formal amendment to the proposal, supporting documents or negotiations subsequent thereto as to training to be provided, services to be performed, prices and options committed to remain in force over a fixed period of time or any other similar matter regardless of the fact that the duration of such commitment may exceed the duration of this contract.

(X/GSA/74)

ADDITIONAL PROVISION

Scope of Contract Commitments I - 1

The Computing and Data Processing Centre, Carleton University agrees to supply the Xerox SPSS program version _____, program documentation, and maintenance for one year to your installation on receipt of the information requested in the attached memorandum and the completed form below.

(X/Carle/74)

ADDITIONAL PROVISION

Scope of Contract Commitments I - 1

The University and IBM acknowledge that they have read this Agreement, understand it, and agree to be bound by its terms and further agree that it is the complete and, except as provided above, is the exclusive statement of the Agreement between the parties, which supersedes all proposals, oral or written, and all other communications between the parties relating to the subject matter of this Agreement.

(IBM/UCal/72)

ADDITIONAL PROVISION

Scope of Contract Commitments I - 1

The Software Program Product covered by this order shall be leased by Lessor subject to all the terms and conditions set forth in this order including the following, which Lessor, in accepting this order agrees to be bound by and to comply with in all particulars and no other terms or conditions shall be binding upon the parties unless hereafter accepted by them in writing. Written acceptance or shipment of all or any portion of the Software Program Products covered by this order shall constitute unqualified acceptance of all its terms and conditions. The terms of any proposal referred to in this order are included and made a part of the order only to the extent of specifying the nature of the Software Program Product ordered, warranties, representations, the price therefore, and the delivery thereof, and then only to the extent that such terms are consistent with the terms and conditions of this order.

(X/UCal/72)

I-2. OTHER APPLICABLE LAWS

SAMPLE PROVISION

Other Applicable Laws I - 2

Any provision required to be included in a contract of this type by any applicable and valid Federal, State, or local law, ordinance, rule or regulation shall be deemed to be incorporated herein.

(X/UCal/72)

ADDITIONAL PROVISION

Other Applicable Laws I - 2

If any of the provisions, or portions thereof, of this Agreement are invalid under any applicable status or rule of law, they are to that extent to be deemed omitted.

(IBM/UCal/72)

ADDITIONAL PROVISION

Other Applicable Laws I - 2

This Agreement will be governed by the laws of the State of California.

(IBM/UCal/72)

ADDITIONAL PROVISION

Other Applicable Laws I - 2

This order is made in, governed by, and shall be construed in accordance with the laws of the State of California.

(X/UCal/72)

I.3. MODIFICATION OF AGREEMENT

SAMPLE PROVISION

Modification of Agreement I - 3

The terms of this Agreement may be modified by IBM or the University upon written ammendment to this Agreement executed by both parties. The term "this Agreement" as used herein includes any future written amendments, modifications or supplements made in accordance herewith.

The University may propose additional or revised terms for any Purchase Order issued during the effective period of this Agreement by typing the proposed additions or revisions on the face of the Purchase Order and by specifying thereon that "the following terms are additions or changes to the basic Program Products License Agreement of IBM and the University of California for purposes of this order only." Such changes shall be subject to acceptance by IBM prior to delivery of any program.

(IBM/UCal/72)

I.4. TERM OF CONTRACT

SAMPLE PROVISION

Term of Contract I - 4

Period of Contract - This Contract is effective after signing by the Contractor and on the date of its last approval or certification of exemption from approval by or on behalf of the contracting State agency, the Director of Finance, and the Director of General Services, and the period of lease shall extend through_____ subject to the availability of funds.

Rider B shall designate the installation date, and, if applicable, removal date of each machine to be leased under this Agreement.

X/CalSt/73

ADDITIONAL PROVISION

Term of Contract 1 - 4

This Agreement is effective from the date on which it is accepted by the University and IBM and shall remain in force until terminated by the University upon one month's prior written notice or by IBM upon three months' prior written notice. Cancellation of any specific program or the University's failure to order additional programs hereunder shall not terminate this Agreement, it being the intent of the parties to leave this Agreement in effect in the event of future orders for programs.

(IBM/UCal/72)

II.1. DELIVERY DATES

SAMPLE PROVISION

Delivery Dates II - 1

When available from the Library, licensed programs will be shipped to the University generally within one month after confirmation or order, subject to conditions beyond IBM's control, unless the University requests a later delivery date.

(IBM/UCal/72)

SAMPLE PROVISION

Delivery Dates II - 1

The Contractor shall provide those programming aids listed on Ricer C without extra charge, except for recording media and transportation charges, on the delivery dates specified in Rider C.

or

(If Contractor supplies the Primary Operating System programs at a charge, use the following:)

The Contractor shall provide, without extra charge, except for recording media and transportation charges, those programming aids so indentified on Rider C, on the delivery dates therein specified. In addition, the Contractor will provide the Primary Operating System software programs for which a charge is made, for the charges specified on Rider C, and on the delivery dates therein specified, under the terms and conditions contained in Rider E, Terms and Conditions Applicable to Primary Operating System Software Programs, in addition to the terms and conditions contained in this Rider A.

X/CalSt/73

SAMPLE REMEDY

Delivery Dates II - 1

Any changes by the State to an order or any part thereof may require establishment of a new and/or an additional mutually agreed-to delivery date which shall be ratified by amendment to Rider C.

(X/CalSt/73)

SAMPLE PENALTY

Delivery Dates II - 1

In the event the Contractor fails to deliver the agreed-upon programming aids by the date specified in Rider C, liquidated damages as prescribed in paragraph 4 will apply and the State may also at its option delay the equipment installation date.

If the Contractor's delay in delivering programming aids is more than thirty (30) calendar days, then by written notice to the Contractor, the State may terminate the right of the Contractor to install or may discontinue the equipment immediately in the event it was already installed.

When requested by the State, the Contractor shall furnish without additional charge (except for media, and their transportation) and during the period of this contract, any programs, compilers, routines, subroutines, etc., which it has developed or may develop at a future date for general use with the type of system ordered and which it furnishes to its customers generally at no additional charge.

(X/CalSt/73)

SAMPLE PENALTY

Delivery Dates II - 1

If the Contractor does not deliver all of the programming aids listed on Rider B & C that are required to meet RFQ specifications ready for operation in substantial conformance with the Contractor's specifications on or before the delivery dates specified on Rider C, the State may at its option delay the equipment installation date and the Contractor shall pay to the State as fixed and agreed liquidated damages in the amount of $100.00, or 1/30th monthly hardware rental charge (including maintenance) whichever is greater, irrespective of the number of programming aids undelivered, for each calendar day between the date specified in Rider C and the date of the delivery of such programming aids, but not for more than 180 calendar days in lieu of all other damages for non-delivery of software. If the Contractor provides suitable substitution of software, acceptable to the State, liquidated damages shall not apply, provided, however, liquidated damages will apply if such substituted software is provided later than the delivery date specified on Rider C. Liquidated damages for non-delivery of software shall likewise not apply for any day on which liquidated damages for non-installation of equipment accrues.

(X/Mich/72)

SAMPLE PENALTY

Delivery Dates II - 1

If the Contractor's delay in delivering programming aids as listed in Rider B & C or an equivalent substitute acceptable to the State, is more than thirty (30) calendar days, then by written notice to the Contractor, the State may terminate the right of the Contractor to install or may discontinue the equipment immediately in the event it was already installed. In the event that the State terminates the right of the Contractor to install or the State discontinues the equipment, the Contractor shall be liable for liquidated damages for the period of time between the date of delivery and the date that the State terminates the right of the Contractor to install or the date of discontinuance of rental of the equipment, but not for more than 180 calendar days. The Contractor shall be liable for all outbound preparation and shipping costs for contracted items returned under this clause. Liquidated damages for non-delivery of software shall likewise not apply for any day on which liquidated damages for non-installation of equipment accrues.

(X/Mich/72)

SAMPLE PENALTY

Delivery Dates II - 1

Licensed programs listed in the Price List and available from the Library will be normally shipped to the Government within 30 days after IBM's receipt of an order and any required program storage media, subject to conditions beyond IBM's control.

Liquidated damages shall be the exclusive damages available to the Government for delay in confirmed installation, delivery or shipment.

IBM shall ship a licensed program of optional materials package before a shipping date (day, month, year) agreed to by IBM and the Government. The shipping date shall be written into the order and the order shall be forwarded to IBM by certified mail. Written confirmation of the order shall be made by IBM within 60 calendar days from the date of the certified mail receipt by IBM, except that IBM may not propose a shipping date different from that in the order if IBM has previously agreed to that same date in writing, and in such event, the order does not require confirmation. If the shipping date is not confirmed by IBM, the date specified in the purchase order shall be considered to be confirmed by IBM.

If IBM does not ship a licensed program or optional materials package before the shipping date as established above, IBM shall pay to the Government, as fixed and agreed liquidated damages, 1/30th of its monthly charge for each calendar day's delay in shipment, but not for more than 180 calendar days.

Except with respect to defaults of subcontractors, IBM shall not be liable for liquidated damages when delays arise out of causes beyond the control and without fault or negligence of IBM. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the delays must be beyond the control and without the fault or negligence of IBM. If the delays are caused by the default of a subcontractor, and if such default arises out of causes beyond the control of both IBM and subcontractor, and without the fault or negligence of either of them, IBM shall not be liable for liquidated damages for delays, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit IBM to meet the required performance schedule.

II.2. INSTALLATION

SAMPLE REMEDY

Installation II - 2

The contractor agrees to rerun the benchmark tests shown in SECTION G, Attachment 3, of this contract, on the initial installation(s) prior to the scheduled installation dates(s).

The time to perform the benchmark reruns will be within _____% of the original benchmark utilizing the hardware and software listed in SECTION G, Attachments 4 and 5 respectively.

(X/GSA/73)

ADDITIONAL REMEDY

Installation II - 2

Should it be necessary, the Government may delay the start of the performance period, but such delay shall not exceed 30 consecutive days; therefore, the performance period must start not later than the 31st day after the installation date. Should the Government delay the start of the performance period, rental charges shall accrue for that period of time between the installation date and the start of the performance period and shall be paid upon completion of the successful performance period.

(X/GSA/73)

SAMPLE PENALTY

Installation II - 2

If the Government is unable to use the equipment because the contractor fails to furnish the software on or before the delivery date or furnishes software which does not perform in accordance with the technical specifications set forth in the vendor's system/equipment proposal (SECTION G, Attachment 6), liquidated damages as specified in paragraph 9.1.1 shall apply in addition to the liquidated damages as specified in paragraph 9.2.1 provided, however, that the total charges for any month shall not exceed _____% of the basic montly rental and maintenance charges for the equipment, and not for more than _____ days.

(X/CSA/73)

SAMPLE PENALTY

Installation II - 2

If the contractor does not deliver the software identified in paragraph 5.1 ready to perform as prescribed in the technical specifications set forth in the vendor's system/equipment proposal (SECTION G, Attachment 6), on or before the delivery date specified, the contractor shall pay to the Government as fixed and agreed liquidated damages of $_____ for each calendar day's delay for each software item not delivered as prescribed and for any other software items not usable as a result thereof, or for each calendar day an amount equal to_____th of the basic monthly rental and maintenance charges for the equipment, whichever is greater, but not for more than _____calendar days.

In the event the provisions of paragraph 9.1.3 are applicable and substitute equipment is installed, the contractor shall be liable for liquidated damages for the period of time between the specified delivery date and the time the software items for the substitute equipment are delivered, ready for use, or for _____days from the delivery date, whichever occurs first.

(X/GSA/73)

SAMPLE PENALTY

Installation II - 2

The installation dates of the equipment set forth in Rider B and the delivery dates for programming aids set forth in Rider C have been fixed so that the utilization of the equipment and programming aids is consistent with the timing schedules of State's programs. If any of the programming aids are not delivered to the State within the time limits specified in Rider C and if any of the units of equipment are not installed within the time specified in Rider B, the delay will interfere with the proper implementation of the State's programs utilizing the equipment leased pursuant to this contract, to the loss and damage of the State. From the nature of the case, it would be impracticable and extremely difficult to fix the actual damages sustained in the event of any such delay. The State and the Contractor, therefore, presume that in the event of any such delay the amount of damage which will be sustained from a delay will be the amount set forth in this paragraph 4, and they agree that in the event of any such delay, the Contractor shall pay such amount as liquidated damages and not as a penalty. Similarly, delay in readying the facility interferes with the installation schedule

under which the Contractor is operating, thus resulting in damages to the Contractor. From the nature of case, it would be impracticable and extremely difficult to fix the actual damages sustained in the event of any such delay. The State and Contractor, therefore, presume that in the event of such delay, the amount of damage which will be sustained will be the amount set forth in this paragraph 4, and they agree that in the event of such a delay, the State will pay such amount as liquidated damages and not as a penalty. Amounts due the State as liquidated damages may be deducted by the State from any money payable to the Contractor pursuant to this contract. The State shall notify the Contractor in writing of any claim for liquidated damages pursuant to this paragraph on or before the date State deducts such sums from money payable to the Contractor.

If the Contractor does not deliver all of the programming aids listed on Rider C ready for use in substantial accordance with the Contractor's specifications on or before the delivery dates specified on Rider C, the Contractor shall pay to the State as fixed and agreed liquidated damages in the amount of $100.00, irrespective of the number of programming aids undelivered, for each calendar day between the date specified in Rider C and the date of the delivery of such programming aids, but not for more than 180 days, in lieu of all other damages. If the Contractor provides suitable substitution of software, acceptable to the State, liquidated damages shall not apply, provided, however, liquidated damages will apply if such substituted software is provided later than the delivery date specified on Rider C. Liquidated damages for nondelivery of software shall likewise not apply for any day on which liquidated damages for noninstallation of equipment accrues.

(X/CalSt/73)

ADDITIONAL PENALTY

Installation II - 2

If the contractor does not install all the software and/or the equipment as shown on the delivery order designated by type and model number), including the special features and required engineering changes and accessories ready for use, before the Installation Date, the Surety of the Performance Bond covered under Article IV shall pay to the Government, as fixed and agreed liquidated damages for each calendar day's delay beginning with the Installation Date, but not for more than 60 calendar days, the amount set forth in Article IV. If the contractor provides suitable substitute equipment, acceptable to the Government, on or before the Installation Date, no liquidated damages shall apply to ordered equipment for which substitute equipment was accepted.

(X/GSA/74)

ADDITIONAL PENALTY

Installation II - 2

If the Government is unable to process the scheduled programs when the equipment is certified ready for use because the contractor failed to furnish the software specified in Article IX, paragraph 1 on or before the installation date, liquidated damages as specified in paragraph 1.a. above, for the applicable unusable machines shall apply.

(X/GSA/74)

II.3. RISK OF LOSS OR DAMAGE

SAMPLE PROVISION

Risk of Loss or Damage II - 3

If any licensed program or optional material is lost or damaged during shipment, IBM will replace the licensed program or optional material and program storage media at no additional charge to the University.

If any licensed program or optional material is lost or damaged while in the possession of the University, IBM will replace the licensed program or optional material at a charge for program storage media unless it is provided by the University.

(IBM/UCal/72)

ADDITIONAL PROVISION

Risk of Loss or Damage II - 3

The University shall be relieved from all risk of loss or damage to the Software Program except when such loss or damage is due to the fault or negligence of the University.

(X/UCal/72)

ADDITIONAL PROVISION

Risk of Loss or Damage II - 3

If any licensed program or optional material is lost or damaged during shipment, IBM will replace the licensed program or optional material and program storage media at no extra charge to the Government.

If any licensed program or optional material is lost or damaged while in the possession of the Government, IBM will replace the licensed program or optional material at IBM's then current charge for the program storage medium unless it is provided by the Government.

(X/GSA/74)

II.4. ACCEPTANCE PROCEDURE

SAMPLE PROVISION

Acceptance Procedure II - 4

IBM shall honor orders for program licenses as provided herein. Certain programs licensed hereunder shall be made available for a pre-installation testing period as specified in the Program Product Price List. The testing period will begin ten days after shipment of the program by IBM and will end upon expiration of the specified period, or upon the Government achieving productive use of the program, whichever is earlier. Productive use refers to the processing of Government work or utilization of the program for the purposes intended by the Government in deciding to license the program. Testing activities such as compilation, assembly or systems generation and check-out of the licensed program itself as well as testing activities using sample programs and jobstreams are not considered productive use. After this testing period the minimum use period for each license is 30 days from the commencement of its monthly charges except as provided below for termination at the end of the Contract period. For programs for which IBM does not specify a testing period, the minimum use period will begin ten days after shipment of the program by IBM.

(IBM/GSA/74)

ADDITIONAL PROVISION

Acceptance Procedure II - 4

Charges shall commence on the day folowing the day the Software Program is utilized in a productive mode or the first day of the successful performance period of the hardware system, whichever is later. The University agrees that the initiation of a productive mode shall be deemed to be acceptance of each Software Program and further agrees to notify the Lessor when productive use begins. For purposes of this Schedule, the term "productive mode" shall mean that the University is using the Software Program in the operations and activities of the University. The University shall have a period of up to ninety (90) days from delivery

of the Software Program to examine and test the program to determine that it meets the requirements and to begin utilizing it in a productive mode. If the program has not been utilized in a productive mode within the 90 day period, the order shall be terminated. The University may, at any time during said ninety (90) day period prior to the utilization of the program in a productive mode, terminate the order upon written notice to the Lessor and return the Software Program.

(X/UCal/72)

ADDITIONAL PROVISION

Acceptance Procedure II - 4

With the exception of certain program products, such as language conversion programs, which have a short life, the programs licensed hereunder shall be made available for a pre-installation testing period (testing period) of thirty or sixty days as specified by IBM. The testing period will begin ten days after shipment of the program by IBM or receipt by the University, whichever is later. The testing period will end upon expiration of the specified period, or upon the University achieving productive use of the program, whichever is earlier.

(IBM/UCal/72)

SAMPLE REMEDY

Acceptance Procedure II - 4

No payment (Use Charge or Initial Charge) shall be made until the Software Program has been accepted by the University.

(X/UCal/72)

II.5. STORAGE MEDIA

SAMPLE PROVISION

Storage Media II - 5

The individual bibliographic records in the Licensed Item to be delivered by Licensor to Licensee shall be formatted according to the specifications described in the technical paper, "U. C. Union Catalog Supplement Record Structure" dated March 1, 1972. The magnetic tapes provided to Licensee will be 9 track, labelled and recorded at 800 bpi density. The physical records on tape will be variable blocked with maximum length of 3154 bytes.

(RAbel/UCUCS/74)

ADDITIONAL PROVISION

Storage Media II - 5

Program storage media (magnetic tapes and disks) will be provided at a charge by IBM if not supplied by the University. Licensed programs will be shipped to the University without charge.

(IBM/UCal/73)

ADDITIONAL PROVISION

Storage Media II - 5

Program storage media (magnetic tapes and disks) will be provided at IBM's then current charge if not promptly supplied by the Government. Licensed programs will be shipped to the Government without extra charge.

All materials shall be preserved, packed, and marked in accordance with IBM's standard practice.

(IBM/GSA/74)

III.1. ALTERATIONS IN SOFTWARE

SAMPLE PROVISION

Alterations in Software, modifications by user III - 1(a)

At its own expense, Licensee may make such modifications and improvements to Licensed Item as it deems appropriate or necessary. It is agreed that the Licensed Item as modified or improved shall be and remain the property of Licensor, and that all products and copies sold from any such modified or improved file shall be subject to royalty payments as provided in the Fee and Royalty

(RAbel/UCUCS/74)

SAMPLE PROVISION

Alterations in Software, modifications by user III - 1(a)

The University may modify any licensed program and/or optional material, in machine readable form, for his own use and merge it into other program material to form an updated work, provided that, upon discontinuance of the license for such licensed program, the licensed program and optional material supplied by IBM will be completely removed from the updated work and dealt with under this Agreement as if permission to modify had never been granted. Any portion of the licensed program or optional material included in an updated work shall be used only on the designated CPU, and shall remain subject to all other terms of the Agreement.

(IBM/UCal/72)

ADDITIONAL PROVISION

Alterations in Software, modifications by user III - 1(a)

Your participation in the development of Xerox SPSS is solicited and welcome, although changes to the program should be made in conjunction with Carleton University to simplify maintenance and enhance the overall development of SPSS.

(X/Carle/74)

ADDITIONAL PROVISION

Alterations in Software, modifications by user III - 1(a)

The University may modify any licensed Software Program and/or optional material to form an updated work, provided that upon the discontinuance of the license for such licensed Software Program, the licensed Software Program material will be completely removed from the updated work and dealt with under this order - as if permission to modify had never been granted.

(X/UCal/72)

SAMPLE PROVISION

Maintenance, Updating and continuing III - 1(b)

In addition, the contractor will make available any other software which the original manufacturer has announced or may announce in the future for general use as furnished to other customers using the same type of equipment supplied under this contract without charge.

(X/GSA/74)

III.2. ASSIGNABLE RIGHTS

SAMPLE PROVISION

Assignable Rights, Limitation of III - 2(a)

This Agreement and any of the licenses, programs or materials to which it applies may not be assigned, sublicensed or otherwise transferred by the University without prior written consent from IBM.

(IBM/UCal/72)

ADDITIONAL PROVISION

Assignable Rights, Limitation of III - 2(a)

Licensee shall not sell or transfer the Licensed item in its entirety to any third party in any form.

Licensee shall require all third party users or purchasers of machine readable portions of the Licensed item to execute a written agreement stating that the recipient will not distribute the machine readable data to fourth tier parties without the prior written consent of Licensor. An exception may be authorized by Licensee in the case of a third party who wishes to contribute such data to a network system of which the third party is a bona fide member. Licensee shall report in writing to Licensor the specifics of any such contribution at the time it is authorized.

(RAbel/UCUCS/74)

SAMPLE PROVISION

Assignable Rights, assignment agreement III - 2(b)

Informatics agrees in principle to allow Customer to transfer his rights in and to the Products, as a result of this license, to UNI-COLL Corporation subject to the following provisions:

1. Such transfer is subject to an upgrade of the Products to the full initial installation price with a service license at the then current prices. Upgrade credit will be based on the standard MARK IV upgrade policy in effect at the time of the transfer.

2. Customer will promptly provide to Informatics a written description of the organization, ownership, and business of UNI-COLL Corporation.

3. Such transfer is subject to the ownership and business of UNI-COLL being substantially the same at the time of transfer as that contained in the written description provided at this time.

4. Informatics' agreement in principle to allow Customer to effect such transfer is valid for a period of two years from the date of delivery of the Products to Customer.

5. Final approval for such transfer must be requested by Customer, and will be granged by Informatics, in writing, subject to the provisions above. Such written consent will not be unreasonably withheld.

(INFO/Penn/73)

ADDITIONAL PROVISION

Assignable Rights, assignment agreement III - 2(b)

Except as expressly provided in this agreement, none of the rights granted by Licensor to Licensee may be assigned, transferred, sublicensed, or disposed of to any third party, directly or indirectly, without the prior written consent of Licensor.

(RAbel/UCUCS/74)

III. 3. CANCELLATION OF AGREEMENT

SAMPLE PROVISION

Cancellation of Agreement III - 3

Any license under this Contract may be discontinued by the Government upon written notice at any time during the testing period, or at the conclusion of the minimum use period, or at any time thereafter upon 30 days prior written notice. Any license may be discontinued by IBM if the Government fails to comply with any of the terms and conditions or other provisions of this contract, or as stated in paragraph 2.d. Notice of discontinuance by either party of any program license will be notice of discontinuance of any license for optional material obtained in connection with such program license.

(IBM/GSA/74)

SAMPLE PROVISION

Cancellation of Agreement III -3

Notice as stated above should also be provided for a discontinuance which occurs at the end of the Contract period, but failure to give notice shall not be deemed as obligating the succeeding fiscal year's funds. All orders automatically terminate on June 30 of the Contract period; however, ordering offices are instructed to notify IBM in writing 30 days prior to the expiration of the purchase order if the license is to be terminated at the end of the Contract period. Renewal of an order under the successor contract will be required if the license is to be continued during the subsequent contract period.

(IBM/GSA/74)

ADDITIONAL PROVISION

Cancellation of Agreement III - 3

The University may terminate any lease hereunder at any time upon one month prior written notice, remaining liable only for charges incurred prior to termination.

(X/UCal/72)

ADDITIONAL PROVISION

Cancellation of Agreement III - 3

The University may terminate any Purchase Order issued under this Agreement upon written notice at any time during the testing period, or at the conclusion of the minimum use period, or at any time thereafter upon one month's prior written notice. IBM may discontinue any license if the University fails to comply with any of the terms and conditions of this Agreement, or as provided in the section of this Agreement entitled "Patent and Copyright Indemnification." Notice of discontinuance of any program license will be notice of discontinuance of any license for optional material obtained in connection with such program license.

(IBM/UCal/72)

III.4. COPYING

SAMPLE PROVISION

Limitation of Copying III - 4(a)

The Government is not granted any right to use or copy in whole or in part, any licensed programs or optional materials other than as expressly stated elsewhere in this Contract. Additional copies of printed materials may be licensed from IBM at the charges then in effect.

Any licensed programs or optional materials which are provided by IBM in machine readable form may be copied, in whole or in part, in printed or machine readable form in sufficient number for use by the Government with the designated CPU, to understand the contents of such machine readable material, to modify the licensed program as provided below, for backup purposes as provided in Paragraph 3., LICENSE, or for archive purposes, provided however, that no more than five printed copies will be in existence under any license at any one time without prior written consent from IBM. The Government agrees to maintain appropriate records of the number and location of all copies that it may make of licensed programs or optional materials which are provided by IBM in machine readable form. The original, and any copies of the licensed programs and/or optional materials, in whole or in part, which are made by the Government shall be the property of IBM.

(IBM/GSA/74)

SAMPLE PROVISION

Limitation of Copying III - 4(a)

The University shall use its best efforts to prevent the unauthorized duplication or disclosure of the Software Program.

(X/UCal/72)

SAMPLE PROVISION

Copying, Copyright III - 4(b)

The Government agrees to reproduce and include IBM's copyright notice on any copies, in whole or in part, in any form, including partial copies in modifications, of licensed programs or optional materials made hereunder in accord with the copyright instructions as set forth in Appendix D.

(IBM/GSA/72)

SAMPLE PROVISION

Copying, Transfer of Copies to New Location III - 4(c)

If the original or any copy of the licensed program or optional materials will be kept at other than the location of the designated CPU, the University will notify IBM in writing of a designated location for the original or copy. However, the University may transport or transmit a copy of the original of any licensed program to another location when the license is temporarily transferred as provided in the section of this Agreement entitled "License," provided the copy or the original is destroyed or returned to its designated location when the period of temporary transfer is concluded and the license reverts back to the designated CPU.

(IBM/UCal/72)

ADDITIONAL PROVISION

Copying, limitation of copying III - 4(a)

Our installation guarantees that Xerox SPSS will not be distributed, wholly or in part, internally or externally, without the consent of Carleton University.

(X/Carle/74)

ADDITIONAL PROVISION

Copying, limitation of copying III - 4(a)

Any licensed programs or optional materials which are provided by IBM in machine readable form may be copied, in whole or in part, in printed or machine readable form, for use by the University with the designated CPU, to understand the contents of such machine readable material, to modify the licensed program as provided below, for back-up purposes as provided in the section of this Agreement entitled "License," or for archive purposes, provided, however, that no more than five printed copies and five machine readable copies will be in existence under any license at any one time without prior written consent from IBM other than copies resident in the designated CPU itself and copies created and used solely for check point and/or restart purposes. The original, and any copies of licensed programs and/or optional materials, or any portions thereof, which are made by the University shall be the property of IBM. In the event a licensed program has been merged, in whole or in part, into another program, the licensed program or part thereof shall remain the property of IBM, the program into which the licensed program, or part thereof, has been merged shall remain the property of the University.

(IBM/UCal/72)

ADDITIONAL PROVISION

Copying, copyright III - 4(b)

Copyright in the Licensed Item in all forms and media shall at all times remain the exclusive property of Licensor.

(RAbel/UCUCS/74)

ADDITIONAL PROVISION

Copying, copyright III - 4(b)

The University agrees to reproduce and include IBM's copyright notice on any copies, in whole or in part, in any form, including partial copies in modifications, of licensed programs or optional materials made hereunder in accord with the copyright instructions to be provided by IBM.

(IBM/UCal/72)

ADDITIONAL PROVISION

Copying, transfer of copies to new location III - 4(c)

No right to print or copy, in whole or in part, the licensed programs or optional materials is granted hereby except as hereinafter expressly provided.

(IBM/UCal/72)

ADDITIONAL PROVISION

Copying, transfer of copies to new location III - 4(c)

The University shall not copy, in whole or in part, any licensed programs or optional materials which are provided by IBM in printed form under this Agreement. Additional copies of printed materials may be licensed from IBM at the charges then in effect.

(IBM/UCal/72)

III.5. DISCONTINUANCE OF USE

SAMPLE PROVISION

Discontinuance of Use III - 5

Within one month after the date of discontinuance of any license or termination of the order under this Contract, the Government shall certify to IBM in writing that through its best effort, and to the best of its knowledge, the original and all copies, in whole or in part, in any form, including partial copies in modifications, of the licensed program and any optional material received from IBM or made in connection with such license have been destroyed, except that, upon prior written authorization from IBM, the Government may retain a copy for archive purposes. However, where the Government has licensed a successive version of the program, which carries a different program number, the Government may retain the prior version of the program for backup purposes for a period not to exceed three months following the date of discontinuance. The Government agrees that any such backup copy will be used only in the event of a problem in the successive version of the program which prevents its use. In no case will both the prior and the successive versions of the program be used simultaneously for productive purposes. Within one month following this three month period, the Government shall certify that the backup copy has been destroyed as indicated above.

(IBM/GSA/74)

ADDITIONAL PROVISION

Discontinuance of Use III - 5

Unless otherwise instructed by the Lessor, the University will erase, destroy or otherwise render unusable the Software Program within 30 days of the date of termination or discontinuance of use.

(X/UCal/72)

ADDITIONAL PROVISION

Discontinuance of Use III - 5

Within one month after the date of discontinuance of any license under this Agreement, the University will furnish IBM with a completed IBM Program Product Certificate of Discontinuance certifying that through its best effort, and to the best of its knowledge, the original and all copies, in whole or in part, in any form, including copies in modifications, of the licensed program and any optional material received from IBM or made in connection with such license have been destroyed, except that, upon prior written authorization from IBM, the University may retain a copy for archive purposes only.

(IBM/UCal/72)

III.6. DOCUMENTATION

SAMPLE PROVISION

Documentation III - 6

Licensed programs and related optional materials which are provided by IBM in printed form under the terms of this Contract (referred to as program documentation) can be shipped to the Government by IBM up to six months prior to shipment of the complete program (which includes machine readable materials). Each program license authorizes the Government to utilize program documentation which is shipped prior to shipment of the complete program, provided that the Government agrees not to use any such program documentation in machine readable form for any purpose. Within the six month period following the date of shipment of the program documentation by IBM, the Government agrees that it will request that the complete program be shipped prior to, or at the conclusion of, the six month period or will discontinue its license for that particular program. The provisions for discontinuing a program license hereunder are in addition to those set forth in Paragraph 2.a. The provisions of Paragraph 2.b. apply to all program licenses even though only program documentation is shipped.

(IBM/GSA/74)

SAMPLE PROVISION

Documentation III - 6

The supplied program documentation will consist of 3 copies of the SPSS manual published by McGraw-Hill, 3 copies of the complete Update Manual issued by NORC, 3 copies of Xerox SPSS documentation, and relevant SPSS newsletters and bulletins, if any.

(X/Carle/74)

SAMPLE PROVISION

Documentation III - 6

The Government shall be provided full documentation of all contractor changes and/or modifications to the software provided to meet the Government's mandatory requirements.

(X/GSA/74)

ADDITIONAL PROVISION

Documentation III - 6

Responsibilities of IBM

IBM will publish design objectives and estimated availability dates for licensed programs which it announces, and will furnish such information to the Government upon request. However, IBM does not represent or warrant that such design objectives or estimated availability dates will be met.

IBM will publish Program Product Specifications for each licensed program with Programming Service Classifications A or B as the licensed program is included in the IBM Program Information Department Library (Library) and will furnish a copy of such Specifications to the Government upon request.

IBM will provide a functional description of each licensed program with Programming Service Classification C as it is included in the Library, and will furnish a copy of such description to the Government upon request.

Responsibilities of the Government

Unless IBM is otherwise obligated in writing to the contrary, the Government shall be exclusively responsible for the supervision, management and control of its use of the licensed programs, and/or optional materials, including

but not limited to: (1) assuring proper machine configuration, program installation, audit controls and operating methods, (2) establishing adequate backup plans, based on alternate procedures and/or based on access to qualified programming personnel to diagnose, patch, and repair licensed program defects in the event of a licensed program malfunction and, (3) implementing sufficient procedures and checkpoints to satisfy its requirements for security and accuracy of input and output as well as restart and recovery in the event of a malfunction.

The Government agrees that it will take appropriate action by instruction, agreement, or otherwise with its employees or other persons permitted access to licensed programs and/or optional materials to satisfy its obligations under this Contract with respect to use, copying, modification, and protection and security of licensed programs and optional materials.

(IBM/GSA/74)

ADDITIONAL PROVISION

Documentation III - 6

IBM will publish design objectives and estimated availability dates for licensed programs which it announces. However, IBM does not represent or warrant that such design objectives or estimated availability dates will be met.

IBM will publish Program Product Specifications for each licensed program with Programming Service Classification A or B as the licensed program is included in the IBM Program Information Department Library (Library).

IBM will provide a functional description of each licensed program with Programming Service Classification C as it is included in the Library.

(IBM/UCal/72)

III.7. EMERGENCY TRANSFER OF USE

SAMPLE PROVISION

Emergency Transfer of Use III - 7

Provided, however, that the license granted under this Agreement for the designated CPU shall be temporarily transferred to (1) one back-up CPU if the designated CPU is inoperative due to malfunction, or during the performance of preventive maintenance, engineering changes, or changes in features or model, until the designated CPU is restored to operative status and processing of the data already entered into the back-up CPU is completed, and (2) to one other CPU for assembly or compilation of the licensed program if the specifications of the designated CPU are such that the licensed program cannot be assembled or compiled on the designated CPU.

(IBM/UCal/72)

ADDITIONAL PROVISION

Emergency Transfer of Use III - 7

The ordering of Software Programs under this order provides the University with a license to use the Software Programs on Computer/Processors as specified provided, however that if the designated Computer/Processors are inoperative due to their malfunction, any license granted for such Computer/Processor shall be temporarily extended to authorize the University to use the licensed program on any other Computer Processor until the designated Computer/Processors are returned to operation.

(X/UCal/72)

III.8. LIABILITY

SAMPLE PROVISION

Liability III - 8

Licensee agrees to indemnify and hold harmless Licensor, its agents, officers, and employees, either in their individual capacities or by reason of their relationship to Licensor, from any and all claims and demands which Licensee and/or any third party and any or all claims and demands which Licensee and/or third party and any or all persons or their successors may have against Licensor by reason of any accident, illness, injury, damage, or other consequences arising or resulting from the license herein granted and occurring at any time subsequent to this grant.

(RAbel/UCUCS/74)

SAMPLE PROVISION

Liability III - 8

The University further agrees that IBM will not be liable for any lost profits or for any claim or demand against the University by any other party, except a claim for patent or copyright infringement as provided herein.

(IBM/UCal/72)

SAMPLE PROVISION

Liability III - 8

The Government agrees that IBM's liability hereunder for damages, other than liquidated damages as provided in Paragraph 12, including but not limited to liability for patent or copyright infringements, regardless of the form of action, shall not exceed the charges paid by the Government for the particular licensed program or optional material involved.

(IBM/GSA/74)

ADDITIONAL PROVISION

Liability III - 8

No action, regardless of form, arising out of this order, may be brought by either party more than four years after the cause of action has occurred.

(X/UCal/72)

ADDITIONAL PENALTY

Liability III -8

In no event will IBM be liable for consequential damages even if IBM has been advised of the possibility of such damages.

(IBM/UCal/72)

III.9. LICENSES

SAMPLE PROVISION

Licenses, General III - 9(a)

Each program license granted hereunder authorizes the Government to use the licensed program in any machine readable form on a single central processing unit designated by type/serial number and its associated units (together referred to as CPU for the purposes of Special Item 132-30 only) or on the CPU designated under another then current license for the identical Program Product. Each optional material license granted hereunder authorizes the Government to use the optional material in any machine readable form on the designated CPU or on the CPU designated under another then current license for the idential Program Product. A separate license is required for each CPU on which the licensed program and/or optional materials in any machine readable form will be used, provided, however, that the license granted under this Contract for the designated CPU shall be temporarily transferred to (1) one backup CPU if the designated CPU is inoperative due to malfunction, or during the performance of preventive maintenance, engineering changes or changes in features or model, until the designated CPU is restored to operative status and processing of the data already entered into the backup CPU is completed, and (2) to one other CPU for assembly or compilation of the licensed program if the specifications of the designated CPU are such that the licensed program cannot be assembled or compiled on the designated CPU. For each program for which IBM specifies "Installation License Applies" in the Program Product Price List, all references to "the designated CPU" shall mean "the designated CPU and any other CPU located in the same single room or contiguous rooms unless otherwise agreed to in writing by IBM." For the purposes of Special Item 132-30, "use" is defined as copying any portion of the licensed program's and/or optional material's instructions or data from storage units or media into the CPU for processing. Licenses granted under this Contract authorize the Government to utilize licensed programs and/or optional materials in printed form, in support of the use of such licensed programs and/or optional materials in machine readable form.

(IBM/GSA/74)

SAMPLE PROVISION

Licenses, Redesignation of CPU III - 9(b)

The University may notify IBM of its intention to redesignate the CPU on which a licensed program and optional materials are to be used. The redesignation will be effective upon the date specified in an amendment to the appropriate Program Product Sheet furnished to the University by IBM.

(IBM/UCal/72)

SAMPLE PROVISION

Licenses, optional materials III - 9(c)

Program licenses granted under this Contract will govern any basic materials, in machine readable or printed form, provided by IBM in the quantities specified for each program license, and any additional copies in printed form licensed from IBM at the charges in effect at the time of their shipment.

For certain licensed programs IBM will offer to license related optional materials, under this Contract or under a separate agreement, provided, however, that optional materials will only be available to customers who have licensed the programs to which such optional materials apply. Optional materials will be provided by IBM in the quantities specified for each optional materials license. Any additional copies in printed form may be licensed at charges in effect at the time of their shipment.

(IBM/GSA/74)

SAMPLE PROVISION

Licenses, term III - 9(d)

The term of this license shall run for a period of seven (7) years from the date of this agreement and may be renewed at the option of Licensee for two additional seven year periods on the same terms as herein provided, upon application to Licensor prior to the expiration of the then current license period. At the expiration of the final period, the license shall continue on a year to year basis unless terminated by either party upon 90 days written notice.

(RAbel/UCUCS/74)

ADDITIONAL PROVISION

Licenses, general III - 9(a)

Each program license granted under this Agreement authorizes the University to use the licensed program in any machine readable form on a single central processing unit designated by type/serial number and its associated units (together referred to as CPU) or on the CPU designated under another then current license for the identical Program Product. Each optional material license granted under this Agreement authorizes the University to use the optional material in any machine readable form on the designated CPU or on the CPU designated under another then current license for the identical Program Product. A separate license is required for each CPU on which the licensed program and/or optional materials in any machine readable form will be used.

For purposes of this Agreement, use is defined as copying any portion of the licensed programs and/or optional material's instructions or data from storage units or media into the CPU for porcessing. Licenses granted under this Agreement authorize the University to utilize licensed programs and/or optional materials, in printed form, in support of the use of such licensed programs and/or optional materials in machine readable form.

(IBM/UCal/72)

ADDITIONAL PROVISION

Licenses, redesignation of cpu III - 9(b)

Programming Aids are not restricted as to usage on the system(s) contracted for under this agreement.

(X/Mich/72)

ADDITIONAL PROVISION

Licenses, redesignation of cpu III - 9(b)

Licensor hereby grants to Licensee a non-exclusive right to use the Licensed Item as provided herein, such use to include, but not be limited to, the production and sale of special indexes and related library or bibliographic tools and products, in both printed and machine readable form.

(RAbel/UCUCS/74)

ADDITIONAL PROVISION

Licenses, redesignation of cpu III - 9(b)

The ordering of Software Programs under this order provides the University with a license to use the Software Programs on Computer/Processors as specified provided, however that if the designated Computer/Processors are inoperative due to their malfunction, any license granted for such Computer/Processor shall be temporarily extended to authorize the University to use the licensed program on any other Computer Processor until the designated Computer/Processors are returned to operation.

(X/UCal/72)

ADDITIONAL PROVISION

Licenses, redesignation of cpu III - 9(b)

The University may notify the Lessor of its intention to redesignate the Computer/Processor upon which the licensed Software Program is to be used, however, such redesignation is subject to the approval of the Lessor.

(X/UCal/72)

ADDITIONAL PROVISION

Licenses, optional materials III - 9(c)

For certain licensed programs IBM will offer to license related optional materials, under this Agreement or under a separate agreement, provided, however, that optional materials will only be available to customers who have licensed the programs to which such optional materials apply. Optional materials will be provided by IBM in the quantities specified for each optional materials license. Any additional copies in printed form may be licensed at these charges in effect at the time they are ordered.

(IBM/UCal/72)

ADDITIONAL PROVISION

Licenses, term III - 9(d)

After this testing period, if the program product is retained, the minimum use period for each license under this agreement will be one month from the beginning of the monthly charges. For the above excepted programs for which IBM does not specify a testing period, the minimum use period will begin ten days after shipment of the program by IBM or receipt by the University, whichever is later.

(IBM/UCal/72)

III.10. MAINTENANCE

SAMPLE PROVISION

Maintenance, emergency III - 10(a)

IBM further agrees at any time during the leasing period to provide, at no additional cost to the University, programming services in correcting program errors and issue corrected releases for software programs with Class A support. However, IBM does not guarantee service results or represent or warrant that all errors will be corrected in any one call.

(IBM/UCal/72)

SAMPLE PROVISION

Maintenance, updating and continuing III - 10(b)

The University shall be exclusively responsible for the supervision, management and control of its use of the licensed programs, and/or optional materials including, but not limited to (1) assuring proper machine configuration, program installation, audit controls and operating methods, (2) establishing adequate back-up plans, and (3) implementing sufficient procedures and check points to satisfy the University's requirements for security and accuracy of input, as well as restart and recovery in the event of a malfunction.

(IBM/UCal/72)

SAMPLE PROVISION

Maintenance, updating and continuing III - 10(b)

In addition, the contractor will make available any other software which the original manufacturer has announced or may announce in the future for general use as furnished to other customers using the same type of equipment supplied under this contract without charge. The delivery date shall be mutually agreed upon by the contractor and the Government. The liquidated damages provisions of this contract do not apply to software furnished under this subparagraph 3.

(X/GSA/74)

SAMPLE PROVISION

Maintenance, reporting procedures, errors III - 10(c)

The support provided will consist of correction of errors, provisions of modifications and improvements that the original manufacturer may develop and provide to the Government under its Federal Supply Schedule contract without additional charges.

The Government shall be provided full documentation of all contractor changes and/or modifications to the software provided to meet the Government's mandatory requirements.

(X/GSA/74)

ADDITIONAL PROVISION

Maintenance, emergency III - 10(a)

The Programming Service Classification of each licensed program will be specified by IBM in the Program Product List for each license. The Programming Service Classification of any licensed program may be changed by IBM upon six months' notice or as provided in the section of this Agreement entitled "Patent and Copyright Indemnification."

Some reclassifications may constitute a discontinuance of services.

Class A

When the University encounters a problem which IBM Field Engineering diagnosis indicates is caused by a defect in a current unaltered release of the licensed program, IBM Field Engineering will (1) if the licensed program is inoperable, apply a Program Temporary Fix (PTF) or make a reasonable attempt to develop an emergency by-pass, and (2) prepare an Authorized Program Analysis Report (APAR) and submit it to an IBM Central Programming Service location.

IBM central Programming Service will respond to any problem caused by a defect in a current unaltered release of the licensed program by issuing a PTF to the originator of the APAR and/or issuing corrected code or notice of availability of corrected code. Corrections will be incorporated into new releases of the licensed program which will be made available to the University by IBM.

Any other programming services or assistance will be provided at a charge.

Class B

When the University encounters a problem which its diagnosis indicated is caused by a licensed program defect, the University may submit an APAR to an IBM Central Programming Service location. IBM Central Programming Service will respond to any problem caused by a defect in a current unaltered release of the licensed program is issuing a PTF to the originator of the APAR and/or issuing corrected code or notice of availability of corrected code. Corrections will be incorporated into new releases of the licensed program which will be made available to the University by IBM.

Any other programming services or assistance will be provided at a charge.

Class C

Programming services or assistance will be provided at a charge. Central Programming Service will not be provided except for corrections applicable to APAR's received prior to the date Class C becomes effective for a licensed program previously assigned Class A or Class B.

All other programming services or assistance requested by the University and provided by IBM, including those resulting from the University's use of other than a current unaltered release of the licensed program, will be at an additional charge not included in this Agreement.

(IBM/UCal/72)

ADDITIONAL PROVISION

Maintenance, updating and continuing III - 10(b)

Maintenance will consist of periodic updates, documentation, newsletters, bulletins, fixes, and new releases, and all reasonable support of Xerox SPSS through consultation by letter, or by telephone at the user's expense. The maintenance year begins on the first day of the month following shipment of the SPSS program.

(X/Carle/74)

ADDITIONAL RPOVISION

Maintenance, updating and continuing III - 10(b)

The contractor shall furnish the software listed in Section F as well as all supporting desirable features set forth in Section F that are proposed and accepted by the Government. Also, the contractor shall support and maintain such software as well as any contractor modification thereto for the systems life at the cost, if any, shown in Section G, Attachment 5. The support provided will consist of correction of errors, provision of modifications and improvements that the contractor may develop.

All later versions of the software (listed in Section G, Attachment 5) and associated documentation will be made available by the contractor. The Government may elect to accept the late versions of the software, and if accepted, software maintenance support will be provided at no additional cost during the period of this contract, including renewals thereof. Any reprogramming cr additional equipment required to accommodate such later version will be at the Government's expense. If the Government elects not to accept such later versions, the contractor shall continue maintenance of software as required by this contract.

The operating software required to make use of the hardware components acquired under this contract will be provided and maintained by the contractor. Operating software is generally defined as those routines that interface directly with hardware peripheral devices, the computer, and applications and utility programs. These routines are variously titled Operating System, Executive System, Monitor Program, Teleprocessing Routines, Remote Terminal Manager, etc. The Government and the contractor agree that the programs and/or routines identified above shall constitute the operating software provided by the contractor.

In addition, the contractor will make available any other software which he has announced or may announce in the future for general use, as furnished to other customers at no additional cost for the type of equipment supplied under this contract. The delivery date shall be mutually agreed upon by the contractor and the Government. The contract liquidated damages Standard of Performance, Malfunction Credits and Effectiveness Level provisions do not apply to software furnished under this paragraph.

(X/GSA/73)

SAMPLE REMEDY

Maintenance, emergency III - 10(a)

Should it be demonstrated that the program does not conform to its published specifications, all charges shall cease until program is corrected to conform, provided no productive use of the program is made. If it is determined that the purported error, malfunction or defect results from or arises out of the use by the University of software not conforming with the software programs, as modified, corrected for improved by IBM, IBM if requested by the University, will use its best efforts to make any necessary correction at additional cost to the University in accordance with IBM's established rates.

(IBM/UCal/72)

SAMPLE REMEDY

Maintenance, emergency III - 10(a)

Should the Lessor be unable to correct or patch any error, malfunction or defect in Software Programs within five (5) days from the University's request, the Lessor shall grant a credit to the University for each day in an amount equal to 1/30th of the Basic Monthly Charge. It it is determined that the purported error, malfunction or defect results from or arises out of the use by the University of Software not conforming with the Software Programs, as modified, corrected or improved by the Lessor, the Lessor, if requested by the University, will use its best efforts to make any necessary correction at additional cost to the University in accordance with the established Analyst Rates.

(X/UCal/72)

ADDITIONAL REMEDY

Maintenance, emergency III - 10(a)

Should the Lessor be unable to correct or patch any error, malfunction or defect in Software Programs within five (5) days from the University's request, the Lessor shall grant a credit to the University for each day in an amount equal to 1/30th of the Basic Monthly Charge. If it is determined that the purported error, malfunction or defect results from or arises out of the use by the University of Software not conforming with the Software Programs, as modified, corrected or improved by the Lessor, the Lessor, if requested by the University, will use its best efforts to make any necessary correction at additional cost to the University in accordance with the established Analyst Rates.

(X/UCal/72)

III.11 ON-LINE ACCESS

SAMPLE PROVISION

On-line Acess III - 11

On-line Access to Licensed Item by Third Parties. It is contemplated that this agreement may in future be amended to permit Licensee to provide one or more means of on-line access to the Licensed Item or portions thereof.

(RAbel/UCUCS/74)

III.12. PATENT AND COPYRIGHT INDEMNITY

SAMPLE PROVISION

Patent and Copyright Indemnity, general III - 12(a)

The lessor agrees to indemnify the University, its officers, agents, servants, and employees against liability of any kind (including costs and expenses incurred) for the infringement of any United States Copyright or patent arising by reason of the use of program products supplied under this order provided, however, that such infringement shall not be caused solely by the University's use or combination with other program material outside the scope of this license.

(X/UCal/72)

SAMPLE PROVISION

Patent and Copyright Indemnity, limitations of III - 12(b)

IBM shall have no liability for any claim of copyright or patent infringement based on (1) use of other than a current unaltered release of the licensed program or optional materials available from IBM if such infringement would have been avoided by the use of a current unaltered release of the licensed program or optional materials available from IBM or (2) use or combination of the licensed program or optional material with non-IBM programs or data if such infringement would have been avoided by the use or combination of the licensed program or optional material with other programs or data. The foregoing states the entire liability of IBM with respect to infringement of any copyrights or patents by the licensed programs or optional materials or any parts thereof.

The University agrees that IBM's liability hereunder for damages excluding liability for copyright infringements and including, but not limited to, liability for patent infringements, regardless of the form of action, shall not exceed the charges paid by the University for the particular licensed program or optional material involved.

The above limitation to patent liability is accepted by the University in that it is represented to be IBM's corporate policy to so limit their liability on software patent indemnification to all its customers. Should IBM indemnify without limitation any other commercial, State or local government customer for patent infringement of IBM software, it will likewise indemnify the University.

(IBM/UCal/72)

ADDITIONAL PROVISION

Patent and Copyright Indemnity, general III - 12(a)

Contractor, at his own expense, will defend any suit which may be brought against the State for the infringements of United States patents or copyrights by the equipment or products furnished hereunder and in any such suit will satisfy any final award for such infringement. This is upon the condition that the State shall give Contractor prompt written notice of such suit and full right and opportunity to conduct the defense thereof, together with full information and all reasonable cooperation, and upon further condition that the claimed infringement does not result from the combination of equipment or products furnished hereunder with other equipment, apparatus, or devices not furnished hereunder. No cost or expense shall be incurred for the account of Contractor without its written consent. If principles of governmental or public law are involved, the State may participate in the defense of any such action.

If in Contractor's opinion the equipment or products furnished hereunder are likely to or do become the subject of a claim of infringement of a United States patent, then without diminishing Contractor's obligation to satisfy said final award, Contractor may, at its option, substitute for the alleged infringing equipment or products other equally suitable equipment or products satisfactory to State, or at Contractor's option and expense, obtain the right for the State to continue the use of such equipment or products.

(X/Mich/72)

ADDITIONAL PROVISION

Patent and Copyright Indemnity, general III - 12(a)

IBM will defend, at its expense, any action brought against the University to the extent that it is based on a claim that licensed program or optional materials, used within the scope of the license hereunder, infringe a copyright in the United States or a United States patent and subject to the limitation of ability stated herein. IBM will pay any costs, damages, and attorney fees finally awarded against the University in such action which are

attributable to such claim, provided that the University notifies IBM promptly in writing of the claim and IBM may fully participate in the defense and/or agrees to any settlement of such claim. Should the licensed programs or optional materials become or, in IBM's opinion, be likely to become, the subject of a claim of infringement of a copyright or a patent, IBM may procure for the University the right to continue using the licensed programs or optional materials, or replace or modify them to make them non-infringing. If neither of the foregoing alternatives is reasonably available to IBM, then IBM may discontinue the licensed program and/or optional materials upon one month's prior written notice to the University, provided that such discontinuance shall apply to all commercial, State and local government customers alike where a similar infringement exists. Upon IBM's written notice of discontinuance to the University, a licensed program with Programming Classification A or B will be changed to Programming Service Classification C.

(IBM/UCal/72)

SAMPLE REMEDY

Patent and Copyright Indemnity, general III - 12(a)

If the use of such equipment or products by the State shall be prevented by permanent injunction, Contractor agrees to take back such equipment or products and refund any sums the State has paid Contractor under this lease, or pursuant to the purchase option, less any reasonable amount for use, maintenance or damage.

(X/Mich/72)

SAMPLE REMEDY

Patent and Copyright Indemnity, general III - 12(a)

Should the licensed programs or optional materials become, or in IBM's opinion be likely to become, the subject of a claim of infringement of a copyright or a patent, IBM may procure for the Government the right to continue using the licensed programs or optional materials, or replace or modify them to make them noninfringing. If neither of the foregoing alternatives is reasonably available to IBM, then IBM may discontinue the licensed program and/or optional materials upon one month's written notice to the Government, subject to the Government's right to require continued use of the programs or optional materials pursuant to the provisions of 28 U.S.C. 1948. In the event of such continued use, the Government shall notify IBM in writing of its election to continue to be licensed with respect to the licensed programs or optional materials and agrees to undertake at the Government's expense the defense of any action against the Government and to indemnify IBM with respect to all costs, damages, and attorney fees attributed to such continued use after such notice is given to IBM; it being understood that IBM may participate at its expense in the defense of any such action if such claim is against IBM. Upon IBM's written notice of discontinuance to the Government, a licensed program with Programming Service Classification A or B will be changed to Programming Service Classification C; and will reserve Programming Service Classification C service except that charges normally billable for Programming Service Classification C service will not be charged, unless otherwise chargeable under the terms of this contract as a result of having been announced prior to award.

(IBM/GSA/74)

III.13. PAYMENT

SAMPLE PROVISION

Payment Procedures III - 13

Monthly charges as set forth in the Price List will commence on the day following the end of the testing period, or ten days after shipment of the program by IBM if there is no testing period, provided, however, charges will not commence on a Saturday or Sunday. In the event of discontinuance of a program license and reordering the same program for the same installation, the Government agrees for that particular program license monthly charges and the minimum use period will begin ten days after shipment of the program by IBM and, therefore, there will be no testing period.

Monthly charges will be invoiced at the end of the month for which the charges accrue and will be payable promptly. Charges for a partial month's use will be prorated based on a 30-day month. In the event that the Government is of the opinion that any charges or credits on an invoice are not billed properly, every effort should be made to promptly pay the portion of the invoice not in question and give detailed written notice to IBM concerning the items in question.

(IBM/GSA/74)

SAMPLE PROVISION

Payment Procedures III - 13

In addition to the license fee under "A" above, Licensee shall, upon receipt of the Licensed Item from Licensor, pay to Licensor the sum of six thousand dollars ($6,000.00) as an advance payment on future royalty obligations.

(RAbel/UCUCS/74)

ADDITIONAL PROVISION

Payment Procedures III - 13

Charges for programs leased will be invoiced monthly and will be payable within 10 days after the end of the month for which the charges accrue.

(IBM/UCal/72)

ADDITIONAL PROVISION

Payment Procedures III - 13

Charges for the Software Programs leased will be invoiced monthly and be payable within 30 days after the end of the month that the charges accrue.

(X/UCal/72)

ADDITIONAL PROVISION

Payment Procedures III - 13

Licensee agrees to provide Licensor with an accounting of sales receipts not less frequently than semi-annually, together with payment of royalties due thereunder, within 30 days after the close of the accounting period.

(RAbel/UCUCS/74)

ADDITIONAL PROVISION

Payment Procedures III - 13

Payment of Charges for fractional parts of a month at the beginning and end of use shall be computed at the rate of 1/30th of the monthly charge for each day the accepted Software Program is installed and operational.

(X/UCal/72)

ADDITIONAL PROVISION

Payment Procedures III - 13

Upon delivery of the Licensed Item to Licensee, Licensee shall pay to Licensor a one-time, lump-sum license fee of fifteen thousand dollars ($15,000.00), as consideration for Licensee's use of the Licensed Item or products therefrom in the internal operation and management of Licensor's business.

(RAbel/UCUCS/74)

ADDITIONAL PROVISION

Payment Procedures III - 13

Payment of charges for fractional parts of a month shall be computed at the rate of 1/30 of the monthly charge for each day the software program in installed and operational.

(IBM/UCal/72)

ADDITIONAL PROVISION

Payment Procedures III - 13

Certain licensed programs may be subject to an initial charge in addition to monthly charges or a single charge per license period in lieu of monthly charges.

(IBM/UCal/72)

III.14. PRICES

SAMPLE PROVISION

Prices, benefit of reduction III - 14(a)

Leasing charges shall be firm for the period of the order except that should the leasing price of a Software Program on this order be lowered during the period of the lease to any other customer, the University shall be charged at the lower rate effective at the time of the price change.

(X/UCal/72)

ADDITIONAL PROVISION

Prices, benefit of reduction III - 14(a)

It is agreed that Licensee shall have the benefit of any lesser royalty rates negotiated by Licensor with any other party for the commercial distribution and sale of Licensed Item, effective with the date of any such revised Royalty Schedule.

(RAbel/UCUCS/74)

ADDITIONAL PROVISION

Prices, benefit of reduction III - 14(a)

Charges are subject to change by IBM upon three months' notice except that should the standard leasing price of the program be lowered during the period of the lease the University shall be charged at the lower rate effective at the time of the price change. Increased prices will go into effect at the end of the University's fiscal year of three months' notice, whichever is longer.

(IBM/UCal/72)

ADDITIONAL PROVISION

Prices, benefit of reduction III - 14(a)

Leasing charges shall be firm for the period of the order except that should the leasing price of a Software Program on this order be lowered during the period of the lease to any other customer, the University shall be charged at the lower rate effective at the time of the price change.

(X/UCal/72)

SAMPLE PROVISION

Prices, Change III - 14(b)

Informatics agrees in principle to allow Customer to transfer his rights in and to the Products, as a result of this license, to UNI-COLL Corporation subject to the following provisions:

Such transfer is subject to an upgrade of the Products to the full initial installation price with a service license at the then current prices. Upgrade credit will be based on the standard MARK IV upgrade policy in effect at the time of the transfer.

(INFOR/Penn/72)

ADDITIONAL PROVISION

Prices, change III - 14(b)

Leasing charges shall be firm for the University's fiscal year, in no event more than one year. Charges are subject to change by IBM upon three months' notice except that should the standard leasing price of the program be lowered during the period of the lease the University shall be charged at the lower rate effective at the time of the price change. Increased prices will go into effect at the end of the University's fiscal year or three months' notice, whichever is longer.

(IBM/UCal/72)

SAMPLE PROVISION

Prices, of emergency services III - 14(c)

The Lessor further agrees to assist, unless specifically stated otherwise in this order, at no additional cost to the University, in diagnosing and verifying on-site any error, malfunction or defect in Software Programs and to commence such assistance within one (1) normal working day after the University's request. Should the Lessor be unable to correct or patch any error, malfunction or defect in Software Programs within five (5) days from the University's request, the Lessor shall grant a credit to the University for each day in an amount equal to 1/30th of the Basic Monthly Charge. If it is determined that the purported error, malfunction or defect results from or arises out of the use by the University of Software not conforming with the Software Programs, as modified, corrected or improved by the Lessor, the Lessor, if requested by the University, will use its best efforts to make any necessary correction at additional cost to the University in accordance with the established Analyst Rates.

(X/UCal/72)

ADDITIONAL PROVISION

Prices, of emergency services III - 14(c)

If it is determined that the purported error, malfunction or defect results from or arises out of the use by the University of software not conforming with the software programs, as modified, corrected or improved by IBM, IBM if requested by the University, will use its best efforts to make any necessary correction at additional cost to the University in accordance with IBM's established rates.

(IBM/UCal/72)

SAMPLE REMEDY

Prices, of emergency services III - 14(c)

Should the Lessor be unable to correct or patch any error, malfunction or defect in Software Programs within five (5) days from the University's request, the Lessor shall grant a credit to the University for each day in an amount equal to 1/30th of the Basic Monthly Charge. It it is determined that the purported error, malfunction or defect results from or arises out of the use by the University of Software not conforming with the Software Programs, as modified, corrected or improved by the Lessor, the Lessor, if requested by the University, will use its best efforts to make any necessary correction at additional cost to the University in accordance with the established Analyst Rates.

(X/UCal/72)

SAMPLE PROVISION

Prices, of maintenance III - 14(d)

The contractor shall furnish the software required by the solicitation and listed on the delivery order and shall support and maintain the software, as well as any OEM modifications thereof, at no additional cost, during the period of this contract, including renewals thereof. The support provided will consist of correction of errors, provisions of modifications and improvements that the original manufacturer may develop and provide to the Government under its Federal Supply Schedule contract without additional charges.

(X/GSA/74)

SAMPLE PROVISION

Prices, of additional options/related material III - 14(e)

When shipment of program documentation is requested prior to shipment of the complete program, there will be a charge for the program documentation equal to one month's charge for the complete program (including any initial charge) or the single charge which may be in lieu of monthly charges. If the Government requests that the complete program be shipped prior to or at the conclusion of the six month period following the date of shipment of the program documentation by IBM, this charge will be credited to the first month's invoice for the complete program. If program documentation has been made available prior to shipment of the complete program and the Government discontinues and reorders the same program for the same installation, program documentation will not again be made available prior to shipment of the complete program.

((IBM/GSA/74)

ADDITIONAL PROVISION

Prices, of additional options/ related material III - 14(e)

At no additional charge, Licensor shall provide Licensee with a complete set of the University of California Union Catalog Supplement (1963-1967) printed in book form, solely for Licensee's use within Licensee's own organization. Licensee agrees not to reproduce this printed form catalog or any portion thereof for distribution to any third party.

(RAbel/UCUCS/74)

ADDITIONAL PROVISION

Prices, of additional options/ related material III - 14(e)

All other programming services or assistance requested by the University and provided by IBM, including these resulting from the University's use of other than a current unaltered release of the licensed program, will be at an additional charge not included in this Agreement.

(IBM/UCal/72)

ADDITIONAL PROVISION

Prices, of additional options/ related material III - 14(e)

The University shall not copy, in whole or in part, any licensed programs or optional materials which are provided by IBM in printed form under this Agreement. Additional copies of printed materials may be licensed from IBM at the charges then in effect.

(IBM/UCal/72)

SAMPLE PROVISION

Prices, royalties for third party use or sale III - 14(f)

As consideration for this license, Licensee agrees to pay Licensor a lump sum fee for in-house use of the Licensed Item, plus royalties on sales and distribution of derived products (either machine readable or non-machine readable) to third parties, in accordance with the Fee and Royalty Schedule attached hereto and made a part of this Agreement.

(RAbel/UCUCS/74)

ADDITIONAL PROVISION

Prices, royalties for third party use or sale III - 14(f)

All sales or deliveries to third parties by Licensee of products or services derived from the Licensed Item shall be subject to the payment of royalties to Licensor as outlined below.

1. Non Machine Readable Products. Licensee shall pay Licensor a royalty of 10% on actual sales receipts from all non machine readable products such as printed products and microform products. In any case where sales receipts consist of exchanged or bartered products, the royalty shall be based on 10% of the regular net selling price of the product delivered. The maximum total royalty

payments under this paragraph shall not exceed eighty thousand dollars ($80,000.00) during the term of this agreement and any extensions thereof, and any additional sales by Licensor thereafter shall be royalty free.

2. Machine Readable Products. Licensee shall pay Licensor royalties on the sale or distribution of all machine readable products such as punched cards and magnetic tapes as follows. In this context the term "record" refers to all the bibliographic information contained in the Licensed Item relative to a single book.

(a) The larger of ten cents ($.10) per record or ten percent (10%) of the actual sales receipts from the sale or other distribution of such records until 500,000 records from the Licensed Item have been distributed.

(b) The larger of seven cents ($.07) per record or seven percent (7%) of the actual sales receipts from the sale or other distribution of such records after the cumulative distribution exceeds 500,000 records but is less than 1,000,000 records.

(c) The larger of five cents ($.05) per record or five percent (5%) of the actual sales receipts from the sale or other distribution of such records after the total cumulative distribution exceeds 1,000,000 records.

(d) There is no maximum total royalty for Machine Readable Products under this paragraph 2.

(RAbel/UCUCS/74)

ADDITIONAL PROVISION

Prices, storage media III - 14(g)

Program storage media (magnetic tapes and disks) will be provided at a charge by IBM if not supplied by the University. Licensed programs will be shipped to the University without charge.

(IBM/UCal/72)

III.15. PROTECTION AND SECURITY

SAMPLE PROVISION

Protection and Security, accounting records required III - 15(a)

The University agrees not to provide or otherwise make available any licensed program or optional material, including but not limited to flow charts, logic diagrams and source code, in any form, to any person other than University or IBM employees without prior written consent from IBM, except during the period any such person is on the University's premises with the University's permission for purposes specifically related to the University's use of the licensed program or optional materials.

(IBM/UCal/72)

SAMPLE PROVISION

Protection and Security, of software III - 15(b)

Licensee agrees to provide Licensor with an accounting of sales receipts not less frequently than semi-annually, together with payment of royalties due thereunder, within 30 days after the close of the accounting period.

(RAbel/UCUCS/74)

ADDITIONAL PROVISION

Protection and Security, of software III - 15(b)

. . . nor will Carleton University be liable for any loss or damage arising therefrom.

(X/Carle/72)

ADDITIONAL PROVISION

Protection and Security, of software III - 15(b)

The University agrees that it will take appropriate action by instruction, agreement, or otherwise with its employees or other persons permitted access to licensed programs, and/or optional materials to satisfy, by its best efforts, its obligations under this Agreement with respect to use, copying, modification, and protection and security of licensed programs and optional materials.

(IBM/UCal/72)

III.16. STANDARDS OF PERFORMANCE

SAMPLE PROVISION

Standards of Performance III - 16

Software furnished shall conform to and perform in accordance with the OEM's technical specifications and data requirements for the equipment supplied under this contract.

(X/GSA/74)

III.17. TAXES

SAMPLE PROVISION

Taxes III - 17

The price or prices specified include all applicable taxes and will not be changed as the result of failure by the Seller to have included any applicable tax or as the result of any change in the Lessor's tax liability.

(X/UCal/72)

SAMPLE PROVISION

Taxes III - 17

Notwithstanding the provisions of Article 27 of the Supplemental Provisions (GSA Form 1424), the Contract price excludes all State and local taxes levied on or measured by the Contract or sales price of the services or completed supplies or licensed programs or optional materials furnished under this Contract except State and local taxes based upon IBM's or the Government's use of the services, supplies, programs, or materials. Taxes excluded from the Contract price pursuant to the preceding sentence shall be separately stated on IBM's invoices and the Government agrees either to pay to IBM amounts covering such taxes or to provide evidence necessary to sustain an exemption therefrom.

(IBM/GSA/74)

ADDITIONAL PROVISION

Taxes III - 17

There shall be added to any charges under this Agreement amounts equal to any taxes, however designated, levied or based on such charges or on this Agreement or the licensed programs or optional materials or their use, exclusive however of personal property taxes assessed on the licensed programs or optional materials and taxes based on net income.

(IBM/UCal/72)

III.18. TECHNICAL SERVICES

SAMPLE PROVISION

Technical Services III - 18

The Contractor's technical personnel shall be available to assist the State in implementation, review and improvement of existing data processing systems and in programming, development and implementation of new systems involving the Contractor's equipment. Charges, if any, for specified RFQ requirements shall be listed in Rider "B".

(X/Mich/72)

SAMPLE PROVISION

Technical Services III - 18

For certain licensed programs, as specified in the Price List, IBM will provide programming services after delivery, without additional charge and during the period of this Contract, to correct licensed program errors and issue corrected releases. However, IBM does not guarantee service results or represent or warrant that all errors will be corrected.

The Programming Service Classification of each licensed program is specified in the Program Product Price List.

(IBM/GSA/74)

SAMPLE PROVISION

Technical Services III - 18

Any programming-related, or control panel-related, services which are not covered in this Contract by a provision explicitly obligating IBM to furnish them may be available from IBM with extra charges and outside the scope of this Contract.

(IBM/GSA/74)

SAMPLE PROVISION

Technical Services III - 18

Programming assistance will be provided by IBM on those IBM programs not receiving IBM Central Programming Service and on non-IBM programs when used in conjunction with IBM equipment. This assistance will be limited to diagnosis or assessment of specific problems in existing programming and, when appropriate, corrections which are assessed by IBM to require 8 hours or less to complete.

Additional systems generation for SCP's and systems generation for IBM control programs will also be provided.

Control panel wiring and debugging will be limited to diagnosing problems on control panels already wired and making modifications as required.

After the existing programming or wired panel problem has been diagnosed, IBM will assess the time required to fix. If it is assessed to be 8 hours or less, IBM will offer to make the required correction. If the time is assessed to be more than 8 hours, any further assistance may be provided by IBM outside of the scope of this Contract.

All IBM time spent in work under the provisions of this Paragraph 16 shall be charged to the Government at the applicable per-call rate per man-hour as set forth in Appendix C.

(IBM/GSA/74)

ADDITIONAL PROVISION

Technical Services III - 18

(See III - 10(a), Maintenance, for additional provision which defines Classes A, B and C)

The applicable per-call rate per man hour as set forth in Appendix C shall apply as follows:

(1) For IBM System Control Programming (SCP)

(a) reconfiguration of SCP's not caused by delivery of equipment from IBM.

(b) incorporation in SCP's of Government-furnished programs or alterations, when requested by the Government.

(c) programming service resulting (i) from use of withdrawn releases of SCP's or (ii) from alternations.

(d) more than one installation of the same SCP release on the same CPU unless caused by IBM.

(e) changes in Control Program Options not caused by IBM.

(f) initial installation of all SCP releases on an IBM CPU not shipped directly from IBM. Subsequent releases will be installed at no additional charge.

(g) when the SCP is installed on the appropriate IBM-manufactured CPU, but a problem is encountered in its use which is determined by IBM to be attributable to a device for which SCP support has not been announced IBM will not submit APAR's to the central programming service location for the problem.

(2) For Program Products

(a) With Programming Service Classification A - increased programming service resulting (i) from use of back-level releases of Program Products with a Programming

Service Classification A unless a defect is identified which exists in the current IBM release, or (ii) from modifications.

(b) With Programming Service Classification B - Any assistance other than (i) the service described in Paragraph 7.b(2); (ii) service resulting from operator error; and (iii) service associated with an unaltered portion of the Program Product when no defect is identified.

(c) With Programming Service Classification C - for programming service including any call resulting from a Government error or when no specific defect is identified, programming assistance, program diagnosis, and corrections assessed by IBM to require 8 hours or less to complete.

(3) For Programs designated as Type I, Type II, and Type III

(a) With Programming Service Classification A - Increased programming service resulting (i) from use of backlevel releases of Programs with a Programming Service Classification A unless a defect is identified which exists in the current IBM release, or (ii) from modifications.

(b) With Programming Service Classification B - for programming Service, other than IBM Central Programming Service, if requested by the Government. Such service will be confined to design and error verification, IBM's Authorized Programming Analysis Reports (APAR) documentation and submission, and application of available program temporary fixes.

(c) With Programming Service Classification C - for programming assistance, program diagnosis, and corrections, assessed by IBM to require 8 hours or less to complete.

(d) The applicable per-call rate per man hour as set forth in Appendix C shall also apply to programming service furnished when any call results from a Government error or when no specific defect is identified, except that no charges shall apply to Types I or II programs which have a Programming Service Classification A when the service in connection with such calls is furnished on a CPU rented under Special Item 132-1A or on a CPU during its maintenance service availability period when under Special Item 132-11.

Each Type I and Type II program is assigned an A, B, or C Programming Service Classification. Programming service is provided for Type I and Type II programs with Programming Service Classifications A,B, or C as follows:

(1) Class A under which IBM will verify Government-detected program errors, provided that the error can be recreated with the latest unaltered release of the program. Error verification may be conducted at the Government's location. IBM will report program errors to an IBM central programming service location for correction. Corrected program releases may be issued. Any other programming services or assistance will be provided in accordance with provisions of Paragraphs 15 and 16 below, or, if not covered by any provisions of any Special Item of this Contract, they may be provided by IBM outside the scope of this Contract.

(2) Class B under which IBM will correct program errors which are forwarded to an IBM central programming service location. Corrected program releases may be issued. Any other programming services or assistance will be provided in accordance with provisions of Paragraph 15 and 16 below, or, if not covered by any provisions of any Special Item of this Contract, they may be provided by IBM outside the scope of this Contract.

(3) Class C under which correction programming service will not be available from IBM central programming service locations. Corrected program releases will not be issued. Any programming services or assistance will be provided in accordance with the provisions of Paragraph 15 and 16 below, or, if not covered by any provisions of any Special Item of this Contract, they may be provided by IBM outside the scope of this Contract.

(IBM/GSA/74)

III.19. TITLE

SAMPLE PROVISION

Title III - 19

The title to the Software Programs licensed under this order and any reproduction thereof furnished to the University by the lessor shall remain with the Lessor. The Software Program is understood to include, in addition to the documentation and all reproductions the original machine readable software, and modifications, improvements and corrections supplied to the University pursuant to this section.

(X/UCal/72)

III.20. TRAINING

SAMPLE PROVISION

Training III - 20

The Contractor shall train an adequate number of operating and programming personnel, including the initial staff and replacements, at the Contractor's training location, or if mutually agreed to, at a State location. Charges, if any, for initial staff, shall be listed in Rider "B".

(X/Mich/72)

III.21. TRANSFER OF USE

(see redesignation of CPU and emergency transfer of use)

III.22. WARRANTY

SAMPLE PROVISION

Warranty III - 22

Each licensed program with Programming Service Classifications A or B will conform to its published Program Product Specifications when it is shipped to the Government. Sample data will be shipped with such licensed programs to assure that the Government has received a valid copy.

Each licensed program with Programming Service Classification C will be distributed on an "as is" basis without warranty.

(IBM/GSA/74)

SAMPLE PROVISION

Warranty III - 22

The Lessor warrants that each licensed program will conform to its published program specification and shall meet such other criteria as represented in the proposal and included supporting documentation upon which this order is based.

(X/UCal/73)

SAMPLE PROVISION

Warranty III - 22

There is no warranty or representation, expressed or implied, as to the accuracy, suitability, or functioning of the supplied program, maintenance, and related materials, nor will Carleton University be liable for any loss or damage arising therefrom.

(X/Carle/74)

SAMPLE PROVISION

Warranty III - 22

Licensor makes no warranty either expressed or implied, as to the accuracy or bibliographic completeness of the records in the Licensed Item.

(RAbel/UCUCS/74)

ADDITIONAL PROVISION

Warranty III - 22

Any written commitment by the contractor within the scope of this contract shall be binding upon the contractor. Failure of the contractor to fulfill any such commitment shall render the contractor liable for liquidated or other damages due to the Government under the terms of this contract. For the purpose of this contract, a written commitment by the contractor is limited to the proposal submitted by the contractor, and to specific written amendment to its proposal. Written commitments by the contractor are further defined as including (1) any warranty or representation made by the contractor in a proposal as to hardware or software performance, total systems performance, and other physical, design or functioning characteristics of a machine, software package or system, or installation date, (2) any warranty or representation made by the Contractor concerning the characteristics or items described in (1) above made in any literature descriptions, drawings or specifications accompanying or referred to in a proposal, and (3) any modification of or affirmation or representation as to the above which is made by the contractor in or during the course of negotiations, whether or not incorporated into a formal amendment to the proposal.

(X/GSA/73)

ADDITIONAL PROVISION

Warranty III - 22

Software furnished shall conform to and perform in accordance with the contractor's technical specifications as set forth in Section G, Attachment 6 (Vendor's System/ Equipment Proposal).

(X/GSA/73)

ADDITIONAL PROVISION

Warranty III - 22

Each licensed program with Service Classification A or B will conform to its published Program Product Specifications when it is shipped to the University. Sample data will be shipped with such licensed programs to assure that the University has received a valid copy.

(IBM/UCal/72)

ADDITIONAL PROVISION

Warranty III - 22

IBM will publish design objectives and estimated availability dates for licensed programs which it announces. However, IBM does not represent or warrant that such design objectives or estimated availability dates will be met.

(IBM/UCal/72)

ADDITIONAL PROVISION

Warranty III - 22

Each licensed program with Service Classification C will be distributed on an "as is" basis without warranty.

(IBM/UCal/72)

ADDITIONAL PROVISION

Warranty III - 22

The foregoing warranty is in lieu of all other warranties, express or implied, including, but not limited to, the implied warranties of merchantability and fitness for a particular purpose.

(IBM/UCal/72)

SOURCES OF EXAMPLE CLAUSES

PART 1: SOFTWARE PACKAGES

INSTITUTION AND PURPOSE OF CONTRACT	ABBREVIATION
Carleton University Agreement with buyer of Xerox SPSS program software supplied by Carleton University	*(X/Carle/74)*
State of California (on behalf of the State University) standard contract with any vendor for hardware and associated software. Clauses pertinent to software have been exerpted here	*(X/CalSt/73)*
University of California terms and conditions for leasing program products (January 1972)	*(IBM/UCal/72)*
State of Michigan, Department of Administration, Purchasing Division, Standard Computer Contract, revised April 1972	*(X/Mich/72)*
University of California Union Catalog Supplement (UCS) license agreement with Richard Abel and Company regarding UC-UCS magnetic tape file	*(RAbel/UCUCS/74)*
General Services Administration master terms and automatic conditions for contracts governing leased/data processing equipment, March 1974	*(X/GSA/74)*
General Services Administration revised draft, standard request for proposal for automated data processing equipment, ADP Procurement Division, September 30, 1973, standard form of contract	*(X/GSA/73)*
University of Pennsylvania agreement in principle with Informatics Inc., Software Products Company to transfer rights in and to products to UNI-COLL Corporation	*(INFOR/Penn/73).*
General Services Administration program products agreement with IBM governing licensed software	*(IBM/GSA/74)*

EXAMPLE ITEMS FOR SPECIFICATIONS FOR BID

PART 1: SOFTWARE PACKAGES

Example Items for Specification for Bid

1) A statement/definition of the overall system objectives.

2) Detailed requirements of the system in terms of functional requirements (transactions). These detailed requirements should include:

   a) a narrative description of the transaction,

   b) the data flow and/or data elements used by the transaction,

   c) the performance criteria for the transaction,

   d) the type of user interface to the transaction; i.e., message standards and conventions,

   e) the editing rules for the transaction.

3) Examples of the documentation we would require for the programs and systems that are developed. (Some of this could be extracted from the DSC Computer Standards Manual).

4) The installation objectives; that is, the overall installation plan that we would expect relative to the design, testing and acceptance of the system.

5) The manpower support we will commit to the project, both in terms of systems analyst and user support.

The vendor should supply in a bid response the following:

1) A manpower plan which would indicate the type and quality of personnel that would be performing the work.

2) The identification of milestones at which reviews would be made on their progress.

3) A facilities plan in terms of where they would perform the actual design, coding, and testing of the system and what, if any, University facilities would be needed.

4) A documentation plan.

5) A project organization plan in terms of who we would be interfacing with, who is responsible for the project, and what mechanisms they would set up relative to change requests, project reviews and other types of design or implementation meetings.

6) An overall time-phased development chart identifying milestones.

7) A statement indicating their understanding of what their responsibilities are in the project.

8) A financial plan; that is, their billing method, how changes to the requirements or specifications will affect that price, etc.

9) A statement of commitment in terms of system software maintenance for a period of time after the system has been installed to ensure that all "bugs" are worked out of the system.

10) A training plan which should include the user training and the system training relative to the design and structure of the system for our benefit in terms of future maintenance.

L. A. Baack
Director
Data Systems Center
University of Michigan

ADDITIONAL EXAMPLE CLAUSES

Part 2: CUSTOM SOFTWARE

I. A. AFFIRMATIVE ACTION

SAMPLE PROVISION

Affirmative Action I-A

SCT agrees that there shall be no discrimination because of race, creed, sex, color, or national origin in the employment, training or promotion of personnel engaged in the performance of this Agreement.

(SCT/LIS/72)

I. B. APPLICABLE LAWS

SAMPLE PROVISION

Applicable Laws I-B

The CONSULTANT shall perform the work required under this Contract in conformity with requirements and standards of the Commonwealth. The CONSULTANT shall also comply with all Federal, Commonwealth and local laws and ordinances applicable to any of the work involved in this Contract.

(SRG/MSCS/72)

ADDITIONAL PROVISION

Applicable Laws I-B

The Company will perform its work hereunder in accordance with all applicable laws and regulations, as an independent contractor through its own employees, for whom it will accept responsibility for any injury or accident to third parties.

(Ma/NotD/72)

ADDITIONAL PROVISION

Applicable Laws I-B

This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Massachusetts.

(Ma/NotD/72)

ADDITIONAL PROVISION

Applicable Laws I-B

The TRUSTEES shall perform the work required under this Agreement in conformity with requirements and standards of the Commonwealth. The TRUSTEES shall also comply with all Federal, Commonwealth and local laws and ordinance applicable to any of the work involved in this Agreement.

(MSCCN/M Bd HE/73)

I. C. ARBITRATION

SAMPLE PROVISION

Arbitration I-C

Any dispute arising under or in connection with this Agreement shall be submitted to binding arbitration before a panel of three arbitrators in the City of Boston in the Commonwealth of Massachusetts pursuant to the rules of the American Arbitration Association.

(Ma/NotD/72)

I. D. ASSIGNABLE RIGHTS

SAMPLE PROVISION

Assignable Rights I-D

Neither this Agreement nor any rights or obligations hereunder may be assigned by either party without the prior written consent of the other.

(Ma/NotD/72)

SAMPLE PROVISION

Assignable Rights I-D

This agreement shall insure to the benefit of and be binding upon the subsidiaries and successors of the parties hereto, but it shall not be assignable by either party without the written consent of the other party. A "subsidiary" means any company or corporation the majority of whose voting stock is now or hereafter controlled either directly or indirectly be a party hereto, any such company or corporation being deemed a subsidiary only so long as such control exists. All obligations and covenants of the State/DHE contained herein with respect to the protection of SCT Confidential Business Information in the CUSTOM System or CUSTOM modifications shall be deemed to be covenants and obligations of the agents, contractors and employees of the State/DHE and SCT.

(SCT/EIS/72)

I. E. AUTHORIZED AGENT

SAMPLE PROVISION

Authorized Agent for this Agreement I-E(a)

The following persons, or their designees, are empowered to legally bind the parties of this Agreement to all original work, terms and conditions and subsequent new work, terms and conditions and/or revised work, terms and conditions hereunder.

(Ma/NotD/72)

SAMPLE PROVISION

Authorized Agent for change in Agreement I-E(b)

The following contracting officers have been designated to negotiate all work, terms, conditions and revisions hereunder.

(Ma/NotD/72)

ADDITIONAL PROVISION

Authorized Agent I-E(a)

The undersigned signatory on behalf of the State/DHE represents and warrants that he has power and authority to act on behalf of the State/DHE in the execution and performance of this agreement.

(SCT/EIS/72)

I. F. CANCELLATION

SAMPLE PROVISION

Cancellation I-F

Notwithstanding anything in this Agreement to the contrary, the University may terminate this Agreement at any time upon thirty (30) days written notice to the Company of intent to terminate. In such event, the Company shall promptly terminate all work and shall incur no further expense chargeable to the University. The University shall pay the Company for work performed up to the effective date of termination at the Company's then current billing rates for hourly work, the Company's final figure of cost to be subject to audit by the University as to hours expended, as a basis for final discharge of all obligations of the University to the Company for services performed under this Agreement. In the event of such termination, all materials developed to date, and all materials furnished by the University will be returned to the University by the Company prior to final payment by the University.

(Ma/NotD/72)

ADDITIONAL PROVISION

Cancellation I-F

Upon 90 days prior written notice to the Company, the Customer may, at any time after 30 days following delivery of the software package, terminate the Contract without penalty, provided, however, that the Customer may not so terminate the Contract as a result of contemplation of leasing or acquiring from anyone other than the Company a software package which is substantially equal to the Company's or may not so terminate when the Company's software package can be modified to become substantially equal to the replacement package being leased or acquired.

(Y/U Mich/74)

ADDITIONAL PROVISION

Cancellation I-F

The performance of work under this contract may be terminated, in whole or from time to time in part, by the DIVISION whenever for any reason the DIVISION shall determine that such termination is in the best interests of the DIVISION. Termination of work hereunder shall be effected by delivery to the CONSULTANT of a Notice of Termination at least thirty working days before termination specifying the extent to which performance of work under the contract is terminated and the date upon which such termination becomes effective. The CONSULTANT shall include in all sub-contracts and agreements of its own relating to the Contract an appropriate reference to this section and appropriate provisions to limit its obligations on account of termination by the DIVISION.

After receipt of the Notice of Termination the CONSULTANT shall cancel his outstanding commitments hereunder covering the procurement of materials, supplies, equipment and miscellaneous items. In addition the CONSULTANT shall excercise all reasonable diligence to accomplish the cancellation or diversion of his outstanding commitments covering personal services and extending beyond the date of such termination to the extent that they relate to the performance of any work terminated by the notice. With respect to such cancelled commitments the CONSULTANT agrees to (1) settle all outstanding liabilities and all claims arising out of such cancellation of commitments, with the approval and ratification of the DIVISION, to the extent he may require, which approval or ratification shall be final for all purposes of this clause, and (2) assign to the DIVISION, in the manner, at the time, and to the extent directed by the DIVISION, all of the rights, title, and interest of the CONSULTANT under the orders and sub-contracts so terminated, in which case the DIVISION shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and sub-contracts.

The CONSULTANT shall submit his termination claim to the DIVISION promptly after receipt of a Notice of Termination, but in no event later than six weeks from the effective date thereof, unless one or more extensions in writing are granted by the DIVISION upon written request of the CONSULTANT within such six week period or authorized extension thereof.

The CONSULTANT and the DIVISION agree upon the whole or any part of the amount or amounts to be paid to the CONSULTANT by reason of the termination under this clause, which amount or amounts may include any reasonable cancellation changes thereby incurred by the CONSULTANT and any reasonable loss upon outstanding commitments for personal services which he is unable to cancel; provided, however, that in connection with any outstanding commitments for personal services which the CONSULTANT is unable to cancel, the CONSULTANT shall have exercised reasonable diligence to direct such commitments to his other activities and operations. Any such agreement shall be enbodied in an amendment to this contract and the CONSULTANT shall be paid in the agreed amount.

I. G. CHANGE IN AGREEMENT

SAMPLE PROVISION

Change in Agreement I-G

(a) This Agreement is based on specifications set forth in Appendix A to this Agreement.

(b) No changes in specifications, requested or suggested by either party, will be made except by written agreement of both parties via the change order procedures (Appendix B, Section III). Any change affecting time or dollars must be processed as a change order.

(c) Any changes agreed to having an incremental or decremental effect on the scope of the Company's services will be set forth as amendments to Appendices B and C annexed hereto or a modification to Appendix A annexed hereto.

(d) Any project delay caused by software, provided by the University as outlined in Appendix C, Notre Dame Vendor Standards, which does not perform according to published specifications for that software.

(Ma/NotD/72)

ADDITIONAL PROVISION

Change in Agreement I-G

The DIVISION reserves the right to make any modificatio s or alterations of the Scope of Services during the duration of the PROJECT if and when such modifications or alterations are deemed necessary for the successful completion of the PROJECT. The DIVISION shall not hold the CONSULTANT liable for any delays incurred by the CONSULTANT as a result of incorporating said modifications or alterations into the Plan of Work. It is understood and agreed by the DIVISION and the CONSULTANTS that any changes to the Scope of Services shall be agreed upon in writing by both parties and such changes shall be incorporated as an amendment to this Contrac and shall be attached thereto. If the incorporation of said changes into the plan of work increases or decreases the estimated cost to the CONSULTANT for the performance of the Scope of Services, the CONSULTANT and the DIVISION may negotiate a change in the clause detailing the compensation to be paid by the DIVISION to the CONSULTANT and the method of payment. Such change shall be agreed upon in writing by both parties and shall be incorporated as an amendment to this Contract and shall be attached thereto.

(SRG/MSCS/72)

ADDITIONAL PROVISION

Change in Agreement I-G

The BOARD reserves the right to make any modifications or alterations of the Scope of Services during the duration of the PROJECT if and when such modifications or alterations are deemed necessary for the successful completion of the PROJECT. The BOARD shall not hold the TRUSTEES liable for any delays incurred by the TRUSTEES as a result of incorporating said modifications or alterations to the PROJECT. If the incorporation of said changes into the PROJECT increases the estimated cost to the TRUSTEES for the performance of the Scope of Services, the TRUSTEES and the BOARD may negotiate a change in the clause detailing the compensation to be paid by the BOARD to the TRUSTEES and the method of payment. Such change shall be agreed upon in writing by both parties and shall be incorporated as an amendment to this Agreement and shall be attached thereto.

(MSCCN/MBd. HE/73)

ADDITIONAL PROVISION

Change in Agreement I-G

In the event that additional work must be performed which was wholly unanticipated, and which was identified in neither the State's Invitation to Bid nor the Contractor's bid submitted in response thereto, but which in the opinion of both parties is necessary to the successful accomplishment of the general scope of work outlined, the procedures outlined in this article will be employed.

For each such item of unanticipated work, a Work Authorization will be prepared in accordance with the sample attached as Exhibit A and will be incorporated as a Schedule to this Agreement.

It is understood and agreed by both parties to this Agreement that all of the terms and conditions of this Agreement shall remain in force with the inclusion of any such Work Authorization added as a Schedule to this Agreement. Such Work Authorization shall in no way constitute a contract other than as provided pursuant to this Agreement nor in any way amend or supersede any of the other provisions of this Agreement.

Each Work Authorization shall consist of a detailed statement of the purpose, objective or goals to be undertaken by the Contractor, the job classification or approximate skill level of the personnel to be made available by the Contractor, an identification of all significant material to be developed by the Contractor and delivered to the State, an identification of all significant material to be delivered by the State to the Contractor, an estimated time schedule for the provision of these services by the Contractor, completion criteria for the work to be performed, the name or identification of the Contractor personnel to be assigned, the Contractor's

estimated man-hours required to accomplish the purpose, objective or goals, the Contractor's billing rates per manhour, and the Contractor's estimated total cost of the Work Authorization.

All Work Authorizations must be in writing and signed by (Name of Contractor Representative) for the Contractor and by (Name of State representative) for the State prior to beginning work.

(X/Cal St U/73)

ADDITIONAL PROVISION

Change in Agreement I-G

Should the Customer desire to change items within the system specifications, during the development of programs under this agreement, the Company will provide an estimate of time required to make the change along with the rate charged for each classification of Company personnel working on Customer software changes.

(Y/U Mich/74)

ADDITIONAL PROVISION

Change in Agreement I-G

DHE approved Program Specifications which reflect changes in program input, output or functions in excess or in addition to those stated in the Work Plan specified below in Section 1.2C shall be subject to additional, mutually agreed upon costs to be taken from Task 4 monies (section 9.1 d).

SCT shall notify DHE in writing of any changes in scope beyond those needed to comply with this contract.

(SCT/EIS/72)

I. H. SCOPE OF CONTRACT COMMITMENTS

SAMPLE PROVISION

Scope of Contract Commitments I-H

The Company agrees to develop, test, document and deliver to the University an automated accounting system for the University in accordance with the specifications hereto annexed and made a part hereof as Appendix A, the Company's proposal hereto annexed and made Appendix B, and Appendix C, Notre Dame Vendor Standards. The system as set forth in Appendix A is hereinafter called the "System".

The Company agrees to use its best efforts to complete various phases of the System in accordance with the schedule hereto annexed and made a part hereof as Appendix B, Section V, as submitted December 27, 1971.

This Agreement and Appendices A through C inclusive, attached hereto, constitute the entire agreement and understanding between the parties.

In case any one or more of the provisions contained in this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

The headings of the sections of this Agreement constitute no part of the Agreement between the parties, having been inserted for convenience only.

(Ma/NotD/72)

ADDITIONAL PROVISION

Scope of Contract Commitments I-H

It is understood and agreed by the DIVISION and the CONSULTANT that no obligations, duties, or rights arising from this Contract shall extend beyond the terms of the Contract and the DIVISION and the CONSULTANT are bound by and limited exclusively by the terms and conditions of this Contract.

(SRG/MSCS/72)

ADDITIONAL PROVISION

Scope of Contract Commitments I-H

The Massachusetts Board of Higher Education Scholarship Program makes available to thousands of Massachusetts' residents, scholarship assistance. The total volume of applications is expected to exceed 45,000 of which approximately 15,000 constitute renewals based on estimates for the 1974-1975 program. Because of this volume, the Fiscal Year funding system and the requirement to communicate and receive responses both from individuals and institutions, an effective instrument to control and schedule this process is required. This PROJECT is designed to meet these needs, and to reduce the clerical paper procedures of distribution of mailing and keypunching. The System developed must:

Provide flexible input and update capabilities.
Provide extensive information and reporting capability.
Provide scheduling flexibility, both in terms of number of processing runs and their actual scheduling.
Provide direct inquiry and update capability by the addition of a direct access link to the files and the System from the BOARD via telecommunication lines to the central computer facility at the Board of Trustees of State Colleges Computer Network.

(MSCCN/MBd.HE/73)

ADDITIONAL PROVISION

Scope of Contract Commitments I-H

The Purpose of this document is to define certain tasks required to _____ (define purpose) _____, establish the responsibility for accomplishing these tasks, and prescribe the payment therefore. These tasks include _____ (describe tasks) _____

For that work which has been clearly identified, Task Schedules, as described below and attached hereto, define and authorize such work on a Fixed Price basis, with a guarantee of task completion.

To the extent that additional work, not foreseen at the time this agreement is executed, must be accomplished, Work Authorizations, as described in Article 8, will be the means for defining and authorizing such work on a Labor Hour basis.

Contractor shall make available to the State technically competent personnel for the purpose of providing the services required to accomplish the tasks prescribed in Task Schedules 1 - _, in the manner described therein. Each such task will be considered complete when the completion criteria, as defined in the applicable Task Schedule, are met.

Each Task Schedule contains, as a minimum, a description of the task, a statement of the Contractor's responsibilities, completion criteria, a list of deliverable items (if any), the estimated starting date, the scheduled completion date, and a fixed cost for the task. The aggregate of the fixed costs for all Task Schedules constitutes the fixed price ceiling for all tasks described in the various Task Schedules.

The Contractor agrees that he will perform the services for which he is responsible, that he will accomplish this work in the manner and in the time stated in the Task Schedules, and that he will provide the deliverable items as required. This performance is predicated, however, on the State meeting its responsibilities in the time and in the manner described in the Task Schedules.

(X/Cal St U/73)

ADDITIONAL PROVISION

Scope of Contract Commitments I-H

SCT shall furnish the Services/System to the State/DHE and the State/DHE shall purchase from SCT the Services/System and associated rights to use same to enhance the existing CUSTOM student information system processes, subject to the terms and conditions set forth in this Agreement.

The contractor shall provide the following tasks:

Task 1 - Furnish modifications to specified CUSTOM Modules for the computer configuration in 2.1 SCT will nodify existing CUSTOM programs to include modifications and enhancements jointly specified by SCT/DHE and the State Colleges.

Task 1.1 - all CUSTOM Modules

The following modifications will be made to all CUSTOM Programs:

a) All existing CUSTOM Programs, currently written in IBM 360/OS COBOL F will be converted to IBM 360/OS ANS COBOL, and coding modifications will be made which make use of beneficial ANS COBOL features, particularly but not exclusively; APPLY CORE INDEX. All converted programs shall be included in testing acceptance procedures as defined in Sections 4.4 and 5.0 respectively.

b) All existing CUSTOM programs will be modified to include standard data set name assignments for all files.

The naming conventions for assigning standard data set names shall be provided by DHE.

c) All existing CUSTOM Programs will be modified to display one of a set of standard halt messages for each possible end of job condition.

d) All CUSTOM reports will be assigned standard report numbers. Like reports from different programs will be assigned like control numbers.

Task 1.2 CUSTOM modifications

a) Attachment I constitutes the detailed Program Specifications for all modifications to be accomplished by SCT unless specifically identified in Attachment II. Attachment II identifies those areas which require program specifications. DHE reserves the right to review Program Specifications under Attachmemt II.

I. I. SPECIFICATIONS

SAMPLE PROVISION

Specifications, data security I-I(a)

The Total Integrated Information System must: Provide adequate security against unauthorized disclosure, of damage to, or tampering with information.

(SCT/EIS/72)

SAMPLE PROVISION

Specifications, other items I-I(b)

The material we should supply in order to allow a vendor to prepare a bid specification could be grouped under the general heading of "Systems Requirement Specifications". This should contain:

1) A statement/definition of the overall system objectives.

2) Detailed requirements of the system in terms of functional requirements (transactions). These detailed requirements should include:

   a) a narrative description of the transaction,

   b) the data flow and/or data elements used by the transaction,

   c) the performance criteria for the transaction,

   d) the type of user interface to the transaction; i.e., message standards and conventions,

   e) the editing rules for the transaction.

3) Examples of the documentation we would require for the programs and systems that are developed. (Some of this could be extracted from the DSC Computer Standards Manual).

4) The installation objectives; that is, the overall installation plan that we would expect relative to the design, testing and acceptance of the system.

5) The manpower support we will commit to the project, both in terms of systems analyst and user support.

(X/U Mich/74)

ADDITIONAL PROVISION

Specifications, other I-1(b)

The CONSULTANT shall design systems for the MSCS which incorporate, or are based on, the concept of a Total Integrated Information System. It is understood that such a system includes, but is not limited to, sub-systems of data, personnel, procedures, hardware, and software at the operational or transactional level, the monitoring or control level, and the planning and evaluation level of the academic, administrative, and fiscal units, and the aggregates of such units, at each college individually, at all the colleges collectively, at the DIVISION office, and for the MSCS at a whole. Such a system integrates the aforementioned sub-systems by means of efficient and effective interfaces between the sub-systems in such a way as to meet the information, data processing and computing needs of all constituent members of the MSCS and appropriate representative external to the MSCS.

The CONSULTANT shall also incorporate the following requirements in the design of the Total Integrated Information System:

The Total Integrated Information System must:

Provide accurate, up-to-date information on students, staff, curriculum, finance and facilities in the appropriate formats to administrators and authorized users at all required levels. Support academic requirements for use of the computer as a research tool, a subject of research, a subject of instruction, a teaching tool, and as a manager of instruction.

Increase efficiency at the operational level by automating repetitive, programmable transactions.

Standardize procedures at the operational level to insure compatability and applicability of System-wide software development efforts.

Standardize data elements and data definitions to insure compatability with NCHEMS data element dictionaries, and to allow meaningful comparison and aggregation of data within the State College System for higher-level analysis, reporting, planning and policy-making decisions.

Permit upgrading of hardware with a minimum of conversion requirements and disruption of workflow.

Allow each college and the System as a whole the flexibility to meet changing needs with minimal change in hardware, software, or personnel.

Maintain modular upward compatibility to permit gradual, step-by-step development of the system according to the specifications of the Master Plan.

Minimize unit computing cost.

Provide easy and timely access to all users throughout the State College System and minimize contention for computer resources.

Minimize the duplication of effort by providing equal access to software and operational developments and innovations to all concerned users.

Minimize complexity and need for highly specialized technical personnel at the colleges.

Maintain a user-orientation in the design, development, implementation and documentation of all applications.

Provide adequate security against unauthorized disclosure of, damage to, or tampering with information.

Minimize turnaround time.

Provide for local batch, remote batch, and eventually, multi-processing, time-sharing, and real-time operational modes.

(SRG/MSCS/72)

ADDITIONAL PROVISION

Specifications, other I-I(b)

I. Modifications to CUSTOM Transaction Input Module;

II. Modifications to CUSTOM Course Schedule Maintenance Module;

III. Modifications to CUSTOM Course Request Module;

IV. Modifications to CUSTOM Student Scheduling Module;

V. Modifications to CUSTOM Add/Drop Processing Modules;

VI. Modifications to all programs in the CUSTOM Course Request, Student Scheduling and Add/Drop Modules;

VII. Modifications to CUSTOM Student Data Base Module;

VIII. Modifications to the CUSTOM Grade Reporting Module.

DETAILED DESCRIPTION OF TASKS TO BE PERFORMED

A. Task 1 - Furnish Modifications to Specified CUSTOM Modules. SCT will modify existing CUSTOM programs to include modifications and enhancements jointly specified by DHE and the State Colleges.

Task 1.1 - all CUSTOM Modules

The following modifications will be made to all CUSTOM Programs:

All existing CUSTOM Programs, currently written in IBM 360 OS COBOL F will be converted to IBM OS ANS COBOL.

All existing CUSTOM programs will be modified to include standard data set names assignments for all files.

All existing CUSTOM programs will be modified to display one of a set of standard halt messages for each possible end of job condition

All CUSTOM reports will be assigned standard report numbers. Like reports from different programs will be assigned like control numbers.

Task 1.2 - Furnish Modifications to Specific CUSTOM Modules

1.2.1 The following modifications will be made to the CUSTOM Transaction Input Module:

The Transaction Error Report(s) (J1501) will be modified to list a diagnostic message(s)

(remaining text of contract is omitted here due to space limitations)

(SCT/EIS/72)

I. J. TERM

SAMPLE PROVISION

Term I-J

The CONSULTANT shall commence performance of the Scope of Services within fourteen calendar days of the date affixed hereon and shall complete said Scope of Services six months from the date of commencement.

If the CONSULTANT shall be delayed in the performance of the work from any cause clearly beyond his control, he may, upon written application to the DIVISION as soon as such delay becomes apparent and before the latest approved completion date of the PROJECT, be granted such extension of time of performance as the DIVISION shall deem just and equitable, and the granting of such extension shall be in writing.

(SRG/MSCS/72)

ADDITIONAL PROVISION

Term I-J

The implementation schedule assumes a contract start date of March 13, 1972

Stage 1: Begins on March 13, 1972
Ends on June 30, 1972

Stage 2: Begins on July 1, 1972
Ends on September 30, 1972

Stage 3: Begins on March 13, 1972
Ends on December 31, 1972

(SCT/EIS/72)

II.A. ACCEPTANCE

SAMPLE PROVISION

Acceptance Procedure II-A(a)

The System shall be delivered as milestones are completed throughout the term of the project leading to final acceptance of the System when the Company has performed all the work described in Appendix A and delineated in Appendix B and C. Approval of each milestone, constituting partial but conditional acceptance by the University, will occur on three levels as follows:

(1) Approval of each milestone in the System as a separate entity, including program specification review and coding completion. Such approval is conditional upon satisfactory performance of the Unit Test and System Test as described hereinafter in Paragraph 10.3.

(2) Approval of performance of the System based on the results of unit testing using test data supplied by the University and on the results of integrated systems testing while operated by Company personnel using actual files and data supplied by the University, at Notre Dame or an off-site facility.

(3) Final acceptance of the System will be based on satisfactory System Test using the same data in Paragraph 10.2 at the University Computing Center. Such operation is to be performed by University personnel using the completed documentation furnished by the Company.

(Ma/NotD/72)

SAMPLE PROVISION

Acceptance Procedure II-A(a)

SCT shall thoroughly test the system to the following levels:

Preliminary

Correction of compilation and logic errors in each program. Checking all processing paths for both normal and reasonable sets of abnormal data. Source code on direct access libraries shall be used.

Module

Integration of individual programs into jobs. Each module shall be thoroughly exercised, with data supplied by DHE. Catalogued procedures and load module libraries shall be used. Data exchanges between programs within a module and between modules within the system shall be written.

The DHE shall thoroughly test the system to the following level: All processing paths in each program in the context of job configurations and system design shall successfully execute. A unified set of live data shall be used. The test shall be conducted by regular remote and local operating staff without assistance by SCT staff. The criteria of acceptance (Section 5) shall be met.

Adequate procedures and forms for control of testing shall be developed. Records of all tests shall be kept by the contractor included:

A. Date, type, purpose of test

B. Summary of results

C. Test data

SCT shall notify DHE at least two (2) days in advance of the commencement of tests for levels 4.1 and 4.2. DHE has the right to send a representative to observe testing.

(SCT/EIS/72)

SAMPLE REMEDY

Acceptance Procedure II-A(a)

After successful completion of the acceptance procedure, it shall be considered that SCT has furnished the specified outputs. Whenever the word "furnish" is used it shall mean:

> The presentation to DHE of operational programs on the designated prime computer test site (Rutgers, CCIS). Upon presentation of the program, DHE shall have three (3) weeks to certify the operational capabilities of the program using system test data, supplied by DHE. DHE is obligated to inform SCT, in writing, of any operational failure of the furnished programs within the specified three-week period. The programs shall be considered furnished, if at the end of the three-week period, no written notice of operational failure is received by SCT or written notice of acceptance has been sent to SCT by DHE. If failures are transmitted, there will be an additional two (2) cycles of 2 weeks of similar periods.
>
> Upon presentation of the documentation DHE shall have three (3) weeks to certify the completeness and accuracy of the documentation. DHE is obligated to inform SCT, in writing, of any omissions or inaccuracies within the specified three-week period. The documentation shall be considered furnished, if at the end of the three-week period, no written notice is recieved by SCT or written notice of acceptance has been sent to SCT by DHE. If comments are transmitted, there will be an additional two (2) cycles of two weeks of similar periods.
>
> It is understood that no documentation will be put in a production status until the completion of Section 5.0.

(SCT/EIS/72)

ADDITIONAL PROVISION

Acceptance, procedure II-A(a)

It is understood that the BOARD shall evaluate the suitability of all work performed and all plans and specifications produced for it by the TRUSTEES in accordance with Article I, Sections A, B, C, and D. The detailed specifications described in Article I are to be in all cases prepared in memorandum form, and submitted to the authorized representatives of the BOARD for their review and approval at each subsequent project review meeting, or subsequent meetings after appropriate modification until such work is satisfactory to the BOARD representatives.

(MSCCN/MBdHE/73)

ADDITIONAL PROVISION

Acceptance, procedure II-A(a)

Within ten (10) days of contract initiation, SCT will provide format specification for any and all new and/or revised reports under this contract. This does not include reports changed only by redefinition of data fields. The DHE will review and accept or comment in writing on all revised and/or new reports. Such acceptance/comments will be provided to SCT in 10 working days. Only data elements present in the files used by the report creating programs(s) as per this agreement will be included.

(SCT/EIS/72)

SAMPLE PROVISION

Acceptance, Standards of II-A(b)

At a minimum, the CUSTOM modifications shall meet the following performance requirements:

Data Volumes Capability. The CUSTOM system as modified shall not decrease the existing data volume capability of CUSTOM.

Processing Time. SCT will employ all reasonable efforts within the existing design structure of all programs to ensure minimal operating times and system resources. DHE will make available up to three (3) man days of systems programmer consulting effort to assist SCT in achieving this goal. SCT/DHE will agree in writing on any and all design structure changes. All resources to implement such design structure changes will be taken from Task 4 monies, if sufficient.

Programming Standards. SCT shall employ all reasonable effort to ensure that CUSTOM modifications conform to mutually agreed upon programming standards. Exceptions shall be authorized in writing by DHE. Within fifteen (15) days of the initiation of this contract, SCT will submit to DHE for approval a set of programming standards to include by way of illustration, but not limited to:

1) Program Design Rules

   e.g. Modularity, branching restrictions

2) Coding Conventions

   e.g. Block contains 0 Records

3) Program Modification Rules

4) JCL Coding

5) Production Control Messages

   format and content

6) Error Messages

   format and content

7) Processing System:

   SCT shall provide all reasonable efforts within modifications made to CUSTOM to avoid the use of decimal arithmetic instructions.

8) SCT shall use existing software or standard utilities in lieu of customized coding whenever feasible.

9) The following COBOL language features are prohibited from use:

   1) Report Writer

   2) Sort Verb.

10) All files except unit record will be labeled.

The CUSTOM Modules shall produce identical outputs when run with identical input.

The CUSTOM system modifications will not alter existing file integrity capabilities presently within the CUSTOM system.

The CUSTOM modifications shall provide for existing controls of data input, processing and all Master Files, except where specified in Attachment I or II. Within the CUSTOM modifications, SCT shall provide all reasonable efforts to include provisions for positive control totals and procedures at each major processing step.

(SCT/EIS/72)

ADDITIONAL PROVISION

Acceptance, standards of II-A(b)

The criteria for acceptance of the CUSTOM system modifications for both modules and system by DHE shall be the furnishing of all required outputs in accordance with the Attachment I, Attachment II, or existing capabilities.

(Y/ U Mich/74)

II.B. CONTROL

SAMPLE PROVISION

Control II-B

The Company shall submit to the University written progress reports on a monthly basis which shall contain the following:

(a) A statement of a percentage of completion of each program itemized in Appendix B, Section V.

(b) A statement of any and all significant problems encountered and a statement of the solution or proposed solution to such problems.

(c) A statement of projects due for completion within the reporting period.

(d) A statement of items requiring renogotiation of any work, terms and/or conditions of this Agreement.

(e) As an attachment, all documentation related to completion and acceptance of any phase within the report period, unless previously delivered within the period.

Weekly project review meetings will be conducted by the Company's project manager with the University personnel designated by the University's contract officer. The Company's project manager will prepare minutes of these weekly meetings. The weekly minutes will include:

(a) Work accomplished during the week;

(b) Work to be accomplished during the coming week; and

(c) Problems encountered during the current week and suggested solutions thereto.

The weekly meeting minutes will be signed by the Company's project manager and the University official designated by the University's contract officer.

In the event of a problem which, in the opinion of the Company's or of the University's project manager, is sufficiently serious to either delay completion of a project as scheduled or affect the agreed price of this Agreement and/or any revisions to this Agreement, the Company shall report this condition in writing within seven (7) days to the University's contract officer or his designee.

(Ma/NotD/72)

ADDITIONAL PROVISION

Control II-B

Preparation of written monthly progress reports by the CONSULTANT during the planning phase to be presented to the appropriate MSCS representatives at scheduled times. These presentations shall give an evaluation of the activities to-date as well as an outline of the activities which will occur during the next month.

A completely detailed budget shall be developed by the CONSULTANT for the first two years and budgets at slightly higher levels of detail for the following two two-year planning periods. Complete costs, both direct and indirect shall be developed in accordance with the line item budget used by the State College System or in accordance with other appropriate budget formats as determined by the DIVISION. These shall be in sufficient detail for the first two years to be used in the submission of annual budgets requests as is.

A complete analysis shall be made by the CONSULTANT of all implementation activities in order to determine possible trouble areas and a complete set of contingency plans shall be developed for each of these areas insofar as it is possible to foresee likely occurrences and the direction of their impact. A series of branching points shall be developed within the implementation plan and depending on the likelihood of a particular occurence, various levels of detail of contingency planning. Insofar as possible a set of indicators shall be developed that can be monitored that will give as much advance warning as possible of an impending change that will affect the system. In order to facilitate this, a series of charts shall be constructed indicating the various aspects of systems that are affected by various kinds of occurrences. This will ensure insofar as possible that when an event does occur, and even if complete contingency plans have not been prepared, all areas that are likely to be affected by that occurrence will be reviewed.

(SRG/MSCS/72)

ADDITIONAL PROVISION

Control II-B

Reviews shall be of two types:

(a) Technical Reviews.

Reviews of technical content of specific system items, e.g. programs, specifications, design criteria, shall be held as necessary. SCT and DHE shall mutually agree upon meeting schedules and subject matter.

(b) Status Reviews.

Formal bi-weekly meetings of designated representatives of DHE and SCT shall be held to review the current progress of work on the project.

SCT shall report status of all tasks in written form which describes:

1. Progress made since last report period
2. Plans for next period
3. Proposed changes in schedule
4. Problems

Minutes of all meetings shall be recorded and shall include such documents as may be pertinent to establish a written record of subject matter covered, decisions and agreements made.

Accounting

SCT shall supply DHE with valid figures and appropriate supporting documentation to account for:

(a) Machine utilization

(b) SCT personnel billable hours under Task 3 and Task 4.

(c) Expense items charged to contract funds

(SCT/EIS/72)

ADDITIONAL PROVISION

Control II-B

A committee shall be established by the MSCS at each college to represent the user populations of the colleges in the design and evaluation processes of the PROJECT. A task force shall be established by the MSCS to represent the collective user population of the eleven colleges and the DIVISION office in all phases of the PROJECT. Sub-committees shall be established by the task force to deal with specific areas or phases of the PROJECT. The currently established Ad Hoc Committee for Data Processing shall represent the Board of Trustees of State Colleges on all matters of policy related to the PROJECT and shall have the final authority as duly-appointed representatives of the Board of Trustees to approve or disapprove any work or product of the CONSULTANT as described herein, or to delegate such authority to other designated representatives of the DIVISION.

The CONSULTANT shall perform the activities described under ARTICLE II in accordance with the following procedures:

1. The CONSULTANT shall hold initial planning sessions and orientation sessions with the DIVISION and with the committees to establish work plans and allocation of responsibility. All such plans and agreements are subject to the approval of the DIVISION.

2. The CONSULTANT shall carry out visits to each of the colleges and the DIVISION office and shall meet with college user committees and other representatives of the college for the purposes of gathering data, presenting reports, reviewing progress, evaluating documentation, and any other specific tasks necessary for the support of the committees and for the satisfactory production of the Master Plan. These visits shall average a minimum of three days per college and DIVISION office, or longer as required to perform all work to the satisfaction of the DIVISION.

3. The CONSULTANT shall prepare for and hold review sessions with the MSCS task force and with each of the working sub-committees of the task force as required.

4. The CONSULTANT shall prepare progress reports for and hold review sessions with the Ad Hoc Committee for Data Processing once every month during the execution of the PROJECT on such dates as to be determined by the DIVISION.

5. The CONSULTANT shall prepare sufficient draft copies of the Master Plan, as specified in ARTICLE II, Section A, paragraphs 23 and 24, for distribution to and analysis by each of the members of each of the abovementioned committees. The CONSULTANT shall prepare for and hold review sessions with the above-mentioned committees on the initial draft plan.

6. The CONSULTANT shall revise the draft version of the Master Plan and distribute it to the colleges and the DIVISION for comment, evaluation, and acceptance, and the CONSULTANT shall arrange, schedule, and hold meetings at each of the colleges and at the DIVISION office to review the current draft version of the Master Plan.

(SRG/MSCS/72)

ADDITIONAL PROVISION

Control II-B

ARTICLE II. APPROVAL AND CERTIFICATION OF SERVICES AND PRODUCTS

It is understood that the DIVISION Shall evaluate the suitability of all work performed and all reports and plans produced by the CONSULTANT in accordance with ARTICLE I., Sections A, B, and C.

(SRG/MSCS/72)

ADDITIONAL PROVISION

Control II-B

The contractor shall provide a weekly written and oral status report, including a review of current and subsequent weeks' work plans and an analysis of any problems previously encountered and still unresolved or anticipated to be encountered. These reports will be made to (Names of State representatives) and and to any other personnel either deems appropriate.

(X/Cal St U/73)

SAMPLE REMEDY

Control II-B

The Company will submit monthly installment invoices to the University contemporaneously with the monthly progress report. If an invoice is received prior to the monthly progress report, that invoice will not be paid until the above progress report is received.

(Ma/NotD/72)

SAMPLE REMEDY

Control II-B

The CONSULTANT shall perform the activities described in ARTICLE III, Section A, paragraph 6, above as often as is necessary to meet the approval of the DIVISION. Such approval will be given, in writing, by the DIVISION when such Master Plan is satsifactory and acceptable to the MSCS. Only when such approval has been formally given to the CONSULTANT by the DIVISION may the CONSULTANT prepare final versions of the Master Plan for distribution to the MSCS, as specified in ARTICLE II, Section C. The CONSULTANT shall prepare for and hold review sessions with any representatives of the MSCS, should such session be deemed necessary by the DIVISION.

(SRG/MSCS/72)

ADDITIONAL REMEDY

Control II-B

The CONSULTANT shall perform any or all work described herein as many times as is necessary until such work is satisfactory to the DIVISION as evidenced by the written approval of the DIVISION on the progress report documenting said work. The CONSULTANT shall also revise and modify any or all reports, documentation, and plans until such products are satisfactory to the DIVISION as evidenced by the written approval of the DIVISION on said products.

(SRG/MSCS/72)

ADDITIONAL REMEDY

Control II-B

Should the Company default in performance of its obligations under this agreement for a period of (10) ten days after receipt of the Company of notice thereof from the Customer, the Customer may at its option terminate this agreement upon payment to the Company in full all sums then due to the Company. Should the Customer default in the performance of its obligations under this agreement for a period of (10) ten days after receipt of notice thereof from the Company, or default in the payment of any sum of money due hereunder beyond the 10th day of the month after such sum was due, the Company may (1) proceed by appropriate court action, either at law or in equity to enforce performance by the Customer of the applicable terms and conditions of the agreement (2) terminate this agreement.

ADDITIONAL REMEDY

Control II-B

DHE reserves the right to request additional reporting according to DHE specifications.

(SCT/EIS/72)

ADDITIONAL REMEDY

Control II-B

The State has the right to require the Contractor to stop or suspend work on any Work Authorization by fifteen (15) calendar days' written notice. The Contractor agrees to stop or suspend work earlier than fifteen (15) days, if Contractor employees engaged in the work can be reassigned to other duties.

Personnel resources will not be expended (at a cost to the State) on task accomplishment in excess of the estimated manhours required unless the procedure below is followed:

(1) If, in the performance of the work, the Contractor determines that a Work Authorization to be performed under this Agreement cannot be accomplished within the estimated manhours, the Contractor will immediately notify the State in writing of the Contractor's estimate of the manhours which will be required to complete the Work Authorization in full. Upon receipt of such notification, the State may:

(a) authorize the Contractor to expend the estimated additional manhours of services in excess of the original estimate necessary to accomplish the Work Authorization (such an authorization not unreasonably to be withheld); or

(b) terminate the work authorization; or

(c) alter the scope of the Work Authorization in order to define tasks which can be accomplished within the remaining estimated manhours.

(2) The State will notify the Contractor in writing of its election within seven (7) calendar days after receipt of the Contractor's notification. If no notice of the election is received, the Contractor may act as if authorization to proceed had been given by the State, and may expend the estimated additional manhours of services as if formally notified. The State agrees to reimburse the Contractor for such additional manhours.

(X/Cal St U/73)

ADDITIONAL PROVISION

Control II-B

Work Authorization, Schedule 1 Title: 70/752 Output Formatter

Task Summary

Develop program to format and print simulated 70/752 displays using a sequential data set as input.

Schedule Dates

Start Date: February 8, 1974
Completion Date: February 28, 1974

Estimated Man Hours	L/H Rate	Estimated Total Cost
100	$40.00	$4,000.00

Contractor Personnel To be Assigned	Job Classification/Skill Level
Bill Jones	Staff Programming Analyst

This task will be performed in accordance with this Work Authorization and the provisions of Rider F, Article 8.

Approval

Contractor Project Manager

SPTCDC Director

A. Task Description

The objective of this task is to specify tasks, deliverables, responsibilities and other requirements for the development of a program to format and print simulated 70/752 displays from a sequential data set. This sequential data set contains output messages generated by CICS test runs.

B. Tasks and Responsibilities

1. Code and test simulator program.
2. Product detail program specification.
3. Produce JCL and operations procedure for program.

C. Deliverables

1. Source code and source listing for simulator program.
2. Detail program specification.
3. JCL and operations procedure.

D. Completion Criteria

Delivery of the program and associated deliverable items listed under heading "C" above will constitute completion of this task.

E. Change Criteria

The program developed under this Work Authorization shall be subject to the Change control procedures outlined in the bid.

F. State Responsibilities

1. Provide functional specification detailing output message formats and resulting screen desplays.
2. Provide input sequential data set of messages for program test.
3. Verify test results.
4. Indicate acceptance of program.
5. Provide computer time.

II. C. CUSTOMER SERVICES

SAMPLE PROVISION

Customer services, facilities II-C(a)

DHE shall provide all computer test time in support of the activities listed in Section 2 as follows:

(a) Prime source of test time is CCIS at Rutgers University.

(b) Jobs will be submitted for testing according to normal CCIS procedures, as defined in CCIS User's Manual. Specifically, remote job submission is encouraged. Card decks may be submitted over the counter. The CCIS Comput r Room is a secured area accessible only to authorized personnel.

(c) DHE Project Manager has responsibility for all decisions regarding job execution priorities and approval of any special requests SCT may make. SCT shall notify DHE Project Manager of all requests for computer time on a 48 hour notification. If for any reason, time should not be available at CCIS for a period of 48 hours or more, the Computer Center at Princeton University shall as the first alternative be requested to make available computer test time.

DHE shall provide computer materials required to perform the activities listed in Section 2 including, but not limited to 3, 2314 or equivalent disk packs, 6, 2400 foot magnetic tape reels, sufficient online storage for source modules, printer paper, card stock and other items

DHE shall make available to SCT computer time and the use of computer program(s) to generate flow charts. This facility shall be made available within two weeks of the receipt of a written request from SCT.

DHE shall provide adequate office space and facilities at a convenient location.

(SCT/EIS/72)

ADDITIONAL PROVISION

Customer Services, facilities II-C(a)

The State shall provide normal office working facilities and equipment necessary for Contractor performance under this Agreement. Any special requirements (e.g., reprographic services, computer time, keypunching, etc.) is identified in the Task Schedules.

(X/Cal St U/73)

II. D. CONSULTING SERVICES

SAMPLE PROVISION

Consulting Services II-D

SCT personnel, upon written authorization and work plan from DHE, will provide on-site consulting services to include, by way of illustration, but not limited to:

1) Admissions specifications;
2) Specification of additional management reports;
3) Consulting on college student processing, organization, and procedures;
4) Specification of interface requirements between custom and other information systems (i.e. EFIS).
5) Specification of billing and/or financial data in the Student Data Base.

(SCT/EIS/72)

SAMPLE PROVISION

Customer Services, information II-C(b)

The State is responible for providing required information, data, documentation, and test data to facilitate the Contractor's performance of the work, and will provide such additional assistance and services as is specifically set forth in the various Task Schedules.

(X/Cal St U/73)

ADDITIONAL PROVISION

Customer Services, information II-C

DHE shall provide representative test data which shall be made available within three (3) weeks of DHE receiving written request from SCT.

DHE shall provide access to procedures and technical information for use of CCIS and Princeton Computer facilities.

(SCT/EIS/72)

SAMPLE PROVISION

Customer Services, staff services II-C(c)

The following services are to be provided to the Company by the University at no cost to the Company:

1. Secretarial services required to type and reproduce required documentation for project administration.
2. Keypunching services, including both operator and machine, to prepare test data, and conversion data.
3. Clerical effort associated with the conversion and acquisition of missing data, as well as the correction of any data deemed incorrect during the conversion.
4. Clerical effort and materials associated with the preparation and approval of any test data processed during the testing phase, such as magnetic tapes and disk packs, librarian services, etc.
5. Machine test time and associated materials, including operators, as described in Appendix B, Section V, hereto annexed and made a part hereof, on the University's premises or at a suitable off-site location.

(Ma/NotD/72)

II. E. DOCUMENTATION

SAMPLE PROVISION

Documentation, delivery II-E(a)

The Company shall deliver to the University, four (4) weeks prior to final acceptance of the System, complete material necessary to operate and maintain the System. This material shall include all flow charts, print layouts, input, output and display formats, transaction code descriptions, user materials, test materials, reports, programs, systems manuals, tape listings, data, object decks, source listings and source decks, program packages and modifications thereof.

(Ma/NotD/72)

ADDITIONAL PROVISION

Documentation, delivery II-E(a)

All existing CUSTOM documentations will be modified to reflect modifications and enhancements made under Task 1. This documentation will be presented concurrent with the modified module, according to the schedule contained in Table 11.1. All modified documentation shall conform to the requirements set forth in Section 6.0.

(SCT/EIS/72)

ADDITIONAL PROVISION

Documentation, delivery II-E(a)

SCT shall furnish modifications as necessary to CUSTOM Documentation as listed in Table 6.1.

6.1 All documentation pertaining to the CUSTOM modifications, except narrative descriptions, shall be delivered in draft form for review. DHE shall prepare in final form. Narrative description pertaining to systems and program documentation shall be submitted in draft form. All drafts shall be neatly typed and consonant with DHE standards. SCT shall provide an appropriate number of copies for all documentation items. All modified documentation will be furnished in the current CUSTOM documentation format.

(SCT/EIS/72)

SAMPLE PROVISION

Documentation, specifications II-E(b)

As part of the documentation described above the Company will deliver the following manuals to the University:

System Documentation - (Two manuals to be delivered)

- Overview of the System
- System Flow Chart
- Concise Statement of Objective for each program or segment in the System
- Sample of all reports and display formats
- Record Layouts

Program Documentation - (Two manuals to be delivered for each job stream)

- Cover Sheet
- Statement of Objective
- Revision Chart
- Top Level Flow Chart
- Processing Narrative
- Logic Flow Chart
- Applicable Record Layouts, Report and Display Formats

Operations Documentation - (Two manuals to be delivered)

- System Flow Chart
- Required Job Control Parameters
- Operator Messages and Actions
- Devices and Files Used

The Company and the University agree that these will be consistent with Section III, Subsections: System Documentation, Programming Documentation, Operations Documentation of the Vendors Standards Manual hereto annexed as Appendix C. The subsection: Users Documentation, Items A, B, C, D and F are included in the System, Program and Operations documentation and will be extractible for inclusion in a user manual. Item D will not be provided by the Company.

(Ma/NotD/72)

ADDITIONAL PROVISION

Documentation, specifications II-E(b)

The seasonality of use of various systems and the degree of use shall be estimated by the CONSULTANT.

Complete descriptions of the interfaces and interdependencies of the systems shall be made by the CONSULTANT so as to minimize the problems of fitting new additions to the system in at future dates.

The organizational implications of implementing each system shall be outlined by the CONSULTANT.

The amount of documentation produced for this project will be very large, and the CONSULTANT shall develop as part of the project a complete information retrieval system involving both a structured and key work indexing system. Each of the documents shall be developed in modules as small as possible and the economics of microfilm and microfiche will be investigated with regard to maintaining and distributing the information.

In areas where a system requires associated procedures other than operating procedures such as planning, budgeting, master planning, etc., the CONSULTANT shall develop procedures for integrating various information systems into the operations of the state colleges. Thus the procedural definition will not be confined to only clerical level tasks.

The documentation from the project shall be developed at several levels of detail for various technical levels of users. Furthermore, the documentation shall be developed in such a way that the levels of detail can be put together to produce one comprehensive document to be used by, for example:

Non-technical users who just want a general understanding of the system.

Technical users who want to understand in depth how to take advantage of a particular system.

Technical operations users who have to maintain the software and operate the system from the point of view of direct involvement with the software, the computer and the data.

Programmer/analysts who are concerned with modifying or indeed building a particular subsystem.

(SRG/MSCS/72)

ADDITIONAL PROVISION

Documentation, specifications II-E(b)

All existing CUSTOM documentations will be modified to reflect modifications and enhancements made under Task 1. This documentation will be presented concurrent with the modified module, according to the schedule contained in Table 11.1. All modified documentation shall conform to the requirements set forth in Section 6.0.

(SCT/EIS/72)

SAMPLE REMEDY

Documentation, specifications II-E(b)

The University must agree that the documentation is in accordance with the documentation standards established in Appendix C, Notre Dame Vendor Standards, within two (2) weeks (of delivery). The Company agrees to correct promptly any defects or deficiencies consistent with the warranty agreement described in Paragraph 12 (A).

II. F. LIABILITY

SAMPLE PROVISION

Liability, limitation of II-F

The Contractor shall be relieved from liability with respect to the performance of work as outlined in each Task Schedule when the State agrees the Task Schedule has been satisfactorily completed.

Except for liability for injury to persons or damage to tangible property, the Contractor will be liable for damages only to the extent of the maximum amount of this Agreement as stated in Article 11.

THE CONTRACTOR WILL NOT BE LIABLE FOR CONSEQUENTIAL DAMAGES EVEN IF THE CONTRACTOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

NOTWITHSTANDING THE FOREGOING, NOTHING CONTAINED HEREIN SHALL LIMIT CONTRACTOR'S LIABILITY FOR PERSONAL INJURY AND DAMAGE TO TANGIBLE PROPERTY CAUSED BY CONTRACTOR'S NEGLIGENCE OR TORTIOUS ACT.

Neither part to this Agreement shall be liable for damages resulting from delayed or defective performance when such delays arise out of causes beyond the control and without the fault or negligence of the offending party. Such causes may include, but are not restricted to, Acts of God or of the public enemy, acts of the State in its sovereign capacity, fires, floods, power failure, disabling strikes, epedemics, quarantine restrictions, and freight embargoes.

(X/Cal St U/73)

ADDITIONAL PROVISION

Liability, limitation of II-F

The CONSULTANT shall assume all responsibility in connection with the performance of the work under this Contract and shall be liable for and save the DIVISION harmless as a result of any damage to persons or property.

(SRG/MSCS/72)

ADDITIONAL PROVISION

Liability, limitation of II-F

Liability of the Company is limited to the foregoing warranty plus the warranty of merchantability and fitness for a particular purpose and liability for copyright infringement as noted elsewhere. The Customer agrees that the Company shall not be liable for consequential damages.

(Y/U Mich/74)

II. G. MAINTENANCE

SAMPLE PROVISION

Maintenance II-G

SCT will maintain the system detailed in this document against all program failures through December 31, 1972. All program failures will be transmitted through DHE to SCT via existing DHE established procedures. DHE and SCT reserve the right to use up to ten (10) days of Task 3 effort to support the task. Additional efforts, if required, will apply Task 4 monies.

(SCT/EIS/72)

ADDITIONAL PROVISION

Maintenance II- G

The Company agrees to negotiate in good faith to provide support to the University, at a fee to be negotiated, in making System modifications or maintaining the System once the System has been accepted by the University, to assure maximum compatibility of the System with changes in the University equipment and other systems.

(Ma/Notd/72)

II. H. PATENT AND COPYRIGHT

SAMPLE PROVISION

Copyright, rights II-H(a)

The Company shall promptly and fully disclose to the University the product of the Company's work hereunder and, upon final payment to the Company, whether the amount in full, or in accordance with Section 9, such material shall be deemed to be work made for hire belonging exclusively to the University, with the University having the right to obtain and to hold in its own name copyrights, registrations or such other protection as may be appropriate to the subject matter, and any extension or renewals thereof. The Company agrees to render all reasonably required assistance to the University to perfect the rights hereinabove described during the term of this Agreement and for a period of one (1) month thereafter.

(Ma/NotD/72)

ADDITIONAL PROVISION

Copyright II-H(a)

No reports or other documents produced in whole or in part under this Contract shall be the subject of an application for copyright or patent by or on behalf of the CONSULTANT.

(SRG/MSCS/72)

SAMPLE PROVISION

Patent and Copyright Indemnity II-H(b)

If notified promptly in writing of any action brought or threatened against the Customer the Company will defend at its expense any action brought against the Customer to the extent that it is based on a claim that custom software developed for the Customer as part of this agreement, is an infringement upon a copyright in the United States or a United States patent and subject to the limitation of liability stated herein, the Company will pay any costs, damages, and attorney fees finally awarded against the Customer in such action which are attributable to such claims, providing the Company has been allowed to fully participate in the defense and/or agrees to any settlement of such claim. Should the Company determine developed programs are likely to become the subject of a claim of infringement of a copyright or patent, the Company may procure, at the Company's expense, for the Customer, the right to continue using the programs or to replace or modify them to make them non-infringing.

(Y/U Mich/74)

ADDITIONAL PROVISION

Patent and Copyright Indemnity II-H(b)

SCT warrants and represents that it has good and merchantable title in the CUSTOM System Modifications being furnished to the State/DHE, and will at all times hereafter indemnify the State/DHE against any and all actions, proceedings, claims, damages, and demands by reason of the installation or use of the CUSTOM modifications

(SCT/EIS/72)

II. I. PAYMENT PROCEDURE

SAMPLE PROVISION

Payment procedure II-I

During the execution of each Task Schedule which involves the delivery to the State of identified deliverable items, the Contractor may submit periodically to the State invoices reflecting a pro-rata cost of the task schedules, determined on the basis of the lesser of either:

(1) the number of deliverables provided to the State divided by the total number of deliverables required to be delivered to the State, less 25%, less any amounts previously invoiced; or

(2) the number of man-hours expended by the Contractor in the performance of the task divided by the number of man-hours scheduled for the task, less 25%, less any amounts previously invoiced.

For those Task Schedules which do not involve delivery to the State of identified deliverable items, but which are of a continuing nature, the Contractor may submit invoices reflecting a pro-rata cost of the Task Schedule, less 25%, less any amount previously invoiced. Actual progress payment amounts, for such Task Schedules, must be based on at least equivalent services rendered and, to the extent practicable, will be keyed to clearly identifiable stages of progress as reflected in written reports submitted with the invoices.

Upon completion of a Task Schedule to the satisfaction of the State, the full charge for such Task Schedule, less amounts previously invoiced to the State in accordance with paragraphs 9.b. or 9.c. above, may be submitted for payment.

In the event that unanticipated work is performed, invoices for services as reflected on Work Authorizations will be submitted to the State for payment. The Contractor will invoice the State monthly for the man-hours expended in each Work Authorization for the preceding month. Each such invoice shall reflect the number of hours worked by each classification of Contractor personnel and the applicable billing rates. In no event shall the total amount paid for such unanticipated work exceed 10% of the total amount of this agreement.

Invoices prepared in accordance with paragraphs 9.b., c., d., and e. above, will not be submitted more frequently than monthly to the State.

The State shall make payment to the Contractor as promptly as fiscal procedures permit, for performance under this Agreement in accordance with applicable completion criteria as accepted by the State and in accordance with invoices submitted.

(X/Cal St U/73)

ADDITIONAL PROVISION

Payment procedure II-I

The University agrees to pay the Company $, or an amount as billed in accordance with Appendix B, Section V, as a fee for developing the System. The University also agrees to pay the Company additional fees not to exceed 10% of the contract fee plus expenses as outlined in Appendix B, Section V, if required. Such fee will be payable in installments as set forth in Appendix B, Section V hereto annexed and made a part hereof. All invoices rendered by the Company to the University shall be subject to review, approval and acceptance by the University's contract officer, designated in Section 13 of this Agreement, or such other person as the University may from time to time appoint to act in behalf of the University.

(Ma/NotD/72)

ADDITIONAL PROVISION

Payment procedure II-I

The DIVISION agrees to pay to the CONSULTANT the total sum not to exceed $72,000 for all cost incurred by the CONSULTANT in satisfactorily performing the SCOPE OF SERVICES enumerated above. The CONSULTANT shall submit to the DIVISION on the last Friday of each month a detailed breakdown of all costs incurred by the CONSULTANT since the last Friday of the preceding month along with the report of progress to date. Upon acceptance and approval of both documents, the DIVISION shall make payment of said amount to the CONSULTANT, until such a time as a total of $60,000 has been paid by the DIVISION to the CONSULTANT. The remaining $12,000 shall be paid to the CONSULTANT upon satisfactory completion of the SCOPE OF WORK and the acceptance by the DIVISION of the Master Plan as specified in ARTICLE 1. However, should the auditing of the books of account of the CONSULTANT by the DIVISION indicate that the total cost to the CONSULTANT for completing the SCOPE OF WORK is less than $72,000, the final payment shall be reduced by such amount as is necessary to make the total payments by the DIVISION to the CONSULTANT equal to the cost to the CONSULTANT.

(SRG/MSCS/72)

SAMPLE REMEDY

Payment procedure II-I

In the aggregate, invoices reflecting progress payments will not exceed 75% of the ceiling amount of the agreement, with the balance to be invoiced upon satisfactory completion of the Agreement.

(X/Cal St U/73)

ADDITIONAL REMEDY

Payment procedure II-I

The DIVISION reserves the right to withhold payment to the CONSULTANT at any time during the PROJECT until the work performed by the CONSULTANT has met with the written approval of the DIVISION.

(SRG/MSCS/72)

ADDITIONAL REMEDY

Payment II-I

Should the Company default in performance of its obligations under this agreement for a period of (10) ten days after receipt of the Company of notice thereof from the Customer, the Customer may at its option terminate this agreement upon payment to the Company in full all sums then due to the Company. Should the Customer default in the performance of its obligations under this agreement for a period of (10) ten days after receipt of notice thereof from the Company, or default in the payment of any sum of money due hereunder beyond the 10th day of the month after such sum was due, the Company may (1) proceed by appropriate court action, either at law or in equity to enforce performance by the Customer of the applicable terms and conditions of the agreement (2) terminate this agreement.

(Y/U Mich/74)

II. J. PERSONNEL

SAMPLE PROVISION

Personnel II-J

It has been agreed that shall act as project manager for the Company in the development of the System, but the University may at any time and in its sole and absolute discretion request his removal. In such event, a successor project manager acceptable to the University shall be appointed, to serve under the same condition.

In the event that , or any successor to him as project manager, or any individuals assigned to the project by the Company, should leave the Company's employ or become incapacitated or unable for any reason to perform his appointed duties for development of the System, the Company may and will replace him with a qualified successor, acceptable to the Univeristy. Should the Company, for any reason other than termination of task, voluntarily or involuntarily remove a person from the task, the Company will provide a replacement suitable to the University.

During the term of this Agreement and for a period of 12 months thereafter, it is mutually agreed that the University will not hire any of the Company's employees assigned to the effort being performed hereunder and, conversely, the Company will not hire any of the University's employees; provided however, that employees voluntarily released by the Company or the University may be hired by the other.

(Ma/NotD/72)

ADDITIONAL PROVISION

Personnel II-J

At least one individual from the staff of the TRUSTEES shall be assigned on a full-time basis to the PROJECT. The BOARD reserves the option to request the TRUSTEES to withdraw any individual from the PROJECT in the event that the individual's performance is judged unsatisfactory by the BOARD. The BOARD shall notify the TRUSTEES, in writing, of said request and the TRUSTEES will endeavor to promptly replace said individual. The TRUSTEES shall commit no less than 24 man-months to the PROJECT in the period ending June 30, 1974.

(MSCCN/MBd.HE/73)

ADDITIONAL PROVISION

Personnel II-J

The CONSULTANT shall assign such individuals to the PROJECT as required, subject to the approval of the DIVISION. At least two individuals from the CONSULTANT's staff shall be assigned on a full-time basis to the PROJECT. The DIVISION reserves the option to request the CONSULTANT to withdraw any individual from the PROJECT in the event that such individual's performance is judged unsatisfactory by the DIVISION. The DIVISION shall notify the CONSULTANT, in writing, of said request and the CONSULTANT will have five working days in which to provide a satisfactory replacement for said individual. The CONSULTANT shall commit no less than 420 man days to the PROJECT.

The CONSULTANT shall not commit more than 420 man-days to the PROJECT so long as the CONSULTANT demonstrates to the reasonable satisfaction of the DIVISION that he has performed the services enumerated in the Scope of Services herein in a prompt and continuous manner in accordance with professional standards of excellence to the best of his ability.

The DIVISION shall assign two systems analysts to the PROJECT on a full-time basis and shall provide the services of other DIVISION personnel as available and as required. It is understood that said personnel shall work along with the staff of the CONSULTANT and that the responsibilities of said personnel shall be determined jointly by the DIVISION and the CONSULTANT. However, the responsibility for and the supervision of said personnel shall be maintained by the DIVISION.

(SRG/MSCS/72)

ADDITIONAL PROVISION

Personnel II-J

a. Contractor personnel shall perform their duties on the premises of the State, during the State's regular work days and normal work hours, except as may be specifically agreed to otherwise by the State.

b. The State reserves the right to disapprove the continuing assignment of Contractor personnel provided to the State under this agreement. If the State exercises this right, and the Contractor cannot immediately replace the disapproved personnel, the State agrees to an equitable adjustment in schedule or other terms that may be affected thereby.

c. The Contractor will make every effort consistent with sound business practices to honor the specific requests of the State with regard to the assignment of its employees; however, subject to paragraph 4.b above, the Contractor reserves the sole right to determine the assignment of its employees. If a Contractor employee is unable to perform due to illness, resignation, or other factors beyond the Contractor's control, the Contractor will make every reasonable effort to provide suitable substitute personnal.

d. In recognition of the fact that Contractor personnel providing services under this Agreement may perform similar services from time to time for others, this Agreement shall not prevent Contractor from performing such similar services or restrict Contractor from using the personnel provided to the State under this Agreement, providing that such use does not conflict with the performance of services under this Agreement.

(X/Cal St U/73)

ADDITIONAL PROVISION

Personnel II-J

DHE reserves the right to provide a representative to act as its Project Manager. The DHE Project Manager shall be responsible for coordinating the activities of remotely and locally located technical and operational staff, responding to contractor's requests, reviewing fulfillment of this contractual agreement and making day-to-day decisions.

SCT shall designate a counterpart to the DHE Project Manager.

The SCT and DHE Project Managers shall act as primary points of contact for the transaction of daily project business.

SCT shall certify in writing to DHE that the SCT Project Technical Manager has expert knowledge of CUSTOM and the New Jersey environment. SCT shall further certify that personnel assigned to the project are experienced in CUSTOM or similar type systems.

(SCT/EIS/72)

SAMPLE REMEDY

Personnel II-J

The University retains the right to require the Company to replace any member of the project team working on or off the University premises whom the University may determine in its reasonable discretion is unfit or otherwise unsatisfactory.

(Ma/NotD/72)

ADDITIONAL REMEDY

Personnel II-J

DHE reserves the right to approve/disapprove the SCT Project Technical Manager assigned to this project.

(SCT/EIS/72)

II. K. PRICES

SAMPLE PROVISION

Prices, general II-K(a)

Total man-day charges shall equal the total license fee specified in section 9.1 a and 9.1 b.

(SCT/EIS/72)

SAMPLE PROVISION

Prices, change II-K(b)

Should the Customer desire to change items within the system specifications, during the development of programs under this agreement, the Company will provide an estimate of time required to make the change along with the rate charged for each classification of Company personnel working on Customer software changes.

(Y/UMich/74)

ADDITIONAL PROVISION

Prices, change II-K(b)

DHE approved Program Specifications which reflect changes in program input, output or functions in excess or in addition to those stated in the Work Plan specified below in Section 1.2C shall be subject to additional, mutually agreed upon costs to be taken from Task 4 monies (section 9.1 d.)

(SCT/EIS/72)

SAMPLE PROVISION

Prices, limit II-K(c)

The CONSULTANT agrees that he shall perform the complete scope of Services as enumerated herein and that he shall not hold the DIVISION liable for costs incurred in excess of $72,000 for the complete performance of the Scope of Services.

In no event shall the DIVISION be liable for any sum in excess of $72,000 on account of any provision of this contract or any action taken by DIVISION in relation thereto.

(SRG/MSCS/72)

ADDITIONAL PROVISION

Prices, limit II-K(c)

The contract costs and payment terms are as follows:

TASK 1 - The fixed license fee purchase price for the specified modifications to existing CUSTOM programs (Section 2.1, Task 1) is $48,960.

The payment terms for modifications to CUSTOM specified in Section 2 are:

1) $5,800 per month for six (6) months upon submission of monthly invoices

2) $1,000 to be paid for each of nine (9) modules as furnished. Furnished is defined in Section 5.1.

3) Upon system acceptance, as defined in Section 5.1, of the modifications furnished, the balance of $5,160.

TASK 2 - The fixed cost of the documentation elements as defined in Section 6.0 and TABLE 6.1 is $6,408. Upon DHE acceptance of final copies of required documentation items, full payment shall become due. $712.00 per module shall be due and payable upon submission of invoice.

TASK 3 - SCT consulting services for installation and training support for the modified modules shall not exceed $7,000. Task 3, consultant services, shall be charged at the rate of $240, $280, or $320 per man per day plus actual travel, meals and lodging. These rates are dependent on the level of SCT Personnel assigned, Senior Consultant, Principal Consultant, or Division Manager. Approximately 25 man days are estimated to perfor this task. SCT shall provide no services under this task without written specification from DHE.

TASK 4 - Cost - CUSTOM Retainer Consultant Services SCT personnel, upon written authorization and work plan from DHE, will provide on-site consulti g services to include, but not limited to:

(1) Admissions specifications;

(2) Specifications of additional management reports;

(3) Consulting on college student processing, organization, and procedures;

(4) Specification of interface requirements between CUSTOM and other information systems.

(5) Specification of billing and/or financial data in the Student Data Base.

Up to 60 man days may be authorized for these purposes. The costs for this task shall not exceed $16,800, and adhere to rate schedule in Task 3 above.

DHE and SCT reserves the right to use any and all portions of these dollars to provide software under a separate license fee arrangement associated with the above consulting.

(SCT/EIS/72)

ADDITIONAL PROVISION

Prices, limit II-K(c)

The TRUSTEES agree that it will perform the complete Scope of Services as enumerated herein for a cost not to exceed $40,000 for the fiscal year ending June 30, 1974.

(MSCCN/MBd.HE/73)

ADDITIONAL PROVISION

Prices, limit II-K(c)

The Contractor shall not pay wages or salaries to any individual Contractor employee for performance under this Agreement, either (1) in excess of $18.75 per hour during any twenty-four (24) hour period, or (2) more than $150.00 for any twenty-four (24) hour period, out of funds payable by the State to the Contractor under this Agreement.

The State's obligation is payable only and solely from funds appropriated for the purpose of this Agreement. The maximum amount of this Agreement shall not exceed $_____, consisting of $_____ for the fixed price tasks prescribed in Task Schedules 1-___ and $_____ set aside for payment of any unanticipated tasks specifically authorized under the provisions of Article 8.

(X/Cal St U/73)

SAMPLE PROVISION

Prices, travel and associated costs II-K(d)

Travel and lodging expenses as incurred from the Company's principal place of business to the University which are consistent with the performance of the development and implementation of the System.

(Ma/NotD/72)

II. L. PROTECTION AND SECURITY

SAMPLE PROVISION

Protection and Security, data II-L(a)

Any reports, information, data, etc., given to or prepared or assembled by the CONSULTANT under this Contract which the DIVISION request to be kept as confidential shall not be made available to any individual or orgnaization by the CONSULTANT without prior written approval from the DIVISION.

(SRG/MSCS/72)

ADDITIONAL PROVISION

Protection and Security, data II-L(a)

Any reports, information, data, etc., given to or prepared or assembled by the TRUSTEES under this Agreement which the BOARD requests to be kept as confidential shall not be made available to any individual or organization by the TRUSTEES without prior written approval from the BOARD.

(MSCCN/MBd.HE/73)

ADDITIONAL PROVISION

Protection and Security, data II-L(a)

All financial, statistical, or personal data and information relating to the State's operations, which is designated confidential by the State and made available to the Contractor in order to carry out this Agreement, will be protected by the Contractor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the State. With respect to technical data which is confidential, and which must be submitted to Contractor by the State in order for Contractor to carry out its work under this Agreement, Contractor will instruct its personnel to keep such informatic confidential by using the same care and discretion with regard to the identified technical data as they use with similar data which Contractor designates as confidential. The maximum period of such treatment of State technical data shall be _____ months from the effective date of this Agreement. The identification of all such confidential data and information, as well as the State's procedural requirement for protection of such data and information from unauthorized use and disclosure, will be provided in writing to the Contractor by the State. The Contractor shall not, however, be required to keep confidential any data or information which is or becomes publicly available, is already rightfully in the Contractor's possession, is independently developed by the Contractor outside the scope of this Agreement, or is rightfully obtained from third parties.

(X/Cal St U/73)

ADDITIONAL PROVISION

Protection and Security, data II-L(a)

In addition, each Work Authorization shall include, as appropriate, the identification by the State of all confidential data and information to be made available to the Contractor in order to carry out this Agreement, as well as written statements of the State's procedural requirements for protection of such data and information from unauthorized use or disclosure. The Contractor agrees he will protect such data from unauthorized use or disclosure in a manner similar to that outlined in Article 6.

(X/Cal St U/73)

ADDITIONAL PROVISION

Protection and Security, data II-L(a)

Confidential information shall mean all information disclosed to the Company by the University relating to the University's past, present and future research, development and business activities, and the results from the Company's work under the Agreement, except such information as is previously known to the Company or is publicly disclosed either prior or subsequent to Company or is publicly disclosed either prior or subsequent to the University's disclosure of such information to the Company or is in the public domain. The Company shall hold all such information in trust for the benefit of the University, and, except as may be authorized by the University in writing, the Company shall return to the University all written or descriptive matter, including but not limited to flow charts, descriptions or other papers or documents which are the property of the University and which contain any such confidential information; provided, however, that the Company may retain one copy of the work performed and descriptive matter created pursuant to this Agreement, but not any documents furnished by the University. Such material as is retained by the Company shall be held in confidence by the Company.

(Ma/NotD/72)

SAMPLE PROVISION

Protection and Security, technical information II-L(b)

The CUSTOM Modifications and Documentation furnished pursuant to this Contract are, and shall be treated as such by the parties hereto as, Confidential Business Information intended for use solely by the State of New Jersey/DHE and Systems & Computer Technology Corporation.

The State/DHE and any New Jersey public or private educational institutions, and the ECC or its successor, agrees not to furnish any information which would disclose anything more than the concepts and theory of the CUSTOM System, or which would enable any other person, firm, corporation or institutions to develop, duplicate or otherwise utilize the CUSTOM System, CUSTOM modifications or documentation.

If the State/DHE and any New Jersey public or private educational institutions, and the ECC or its successor, contracts with any person, firm, corporation or institution for any computer equipment or services relating to the CUSTOM System or CUSTOM Modifications, it shall require that such contracting agent undertake in writing not to use, sell or market or otherwise disclose such information concerning the CUSTOM System or CUSTOM modifications which would enable any person, firm, corporation or institution to develop, duplicate or otherwise utilize the CUSTOM System or CUSTOM modifications.

The use of the CUSTOM Modifications and Documentation by the State of New Jersey/DHE shall mean the use by any public or private educational institution, the ECC or its successor, within the State of New Jersey. The use of Custom Modifications and Documentation by Systems & Computer Technology Corporation shall mean use for any business purpose which does not interfere with or infringe upon the use of the CUSTOM Modifications by the State of New Jersey.

(SCT/EIS/72)

ADDITIONAL PROVISION

Protection and Security II-L(b)

The Company agrees to safeguard the confidential nature of the completed System as well as all information furnished by the University in pursuit of the objectives of this Agreement.

(Ma/NotD/72)

II. M. SCHEDULE

SAMPLE PROVISION

Schedule II-M

The CONSULTANT shall prepare a detailed Plan of Work (detailing responsibilities for work to be performed by the CONSULTANT and by the DIVISION, setting dates for the completion of various phases of the PROJECT, and specifying documentation to be completed, as well as scheduling other necessary activities) within ten working days of the date of commencement, said Plan of Work to be submitted in writing to the DIVISION for written approval.

The DIVISION shall take appropriate and reasonable action to insure that the activities, as scheduled in the approved Plan of Work, will proceed as scheduled. The DIVISION shall not hold the CONSULTANT liable for any delays in the execution of the Plan of Work if such delays result from any action or lace thereof on the part of the DIVISION or the MSCS.

(SRG/MSCS/72)

ADDITIONAL PROVISION

Schedule II-M

Within 10 days of contract initiation, SCT will provide the DHE with a work plan. This work plan is to detail all end items to be produced under Tasks 1 and 2. For each end item, due dates and man-days will be specified.

The implementation schedule assumes a contract start date of March 13, 1972

Stage 1: Begins on March 13, 1972
Ends on June 30, 1972

Stage 2: Begins on July 1, 1972
Ends on September 30, 1972

Stage 3: Begins on March 13, 1972
Ends on December 31, 1972

(SCT/EIS/72)

ADDITIONAL PROVISION

Schedule II-M

The Company agrees to use its best efforts to deliver the System and documentation set forth in Section 6 of this Agreement to the University pursuant to the milestone schedule contained in Appendix B, Section V. This schedule is contingent upon the University delivering the Unit and Systems test data for programming in accordance with the milestone schedule in Appendix B, Section V, hereto attached and made a part thereof. Should the test data not be available on time, the Company reserves the right to renegotiate this agreement per Section 11 of this Agreement.

(Ma/NotD/72)

SAMPLE REMEDY

Schedule II-M

Delay or failure by the State to fulfill the above described responsibilities, such that the Contractor is prevented from performing in accordance with the applicable Task Schedules, may result in additional costs to the State and deviations from previously agreed upon work schedules. In this event, the State and the Contractor will initiate one or more Work Authorizations, as described in Article 8. Should the Contractor determine that a delay exists, or is probable due to failure of the State, the Contractor will notify the State in writing immediately.

(X/Cal St U/73)

ADDITIONAL REMEDY

Schedule II-M

SCT shall notify DHE in writing promptly in advance of schedule slippage, whenever possible.

(SCT/EIS/72)

ADDITIONAL PENALTY

Schedule II-M

Delays directly attributable to system unavailability at either the prime or the alternate site shall be cause of concomittant delays in implementation of the specified modifications. Delays in scheduling computer time in excess of 72 hours and/or on site delays in excess of 8 hours shall be billable at the rate shown for Task 3 (Section 11.1 c).

The determination of the starting point for delays shall be submitted by SCT to the DHE Project Manager.

Delays will be defined as the unavailability of a computer for processing during agreed upon scheduled time.

(SCT/EIS/72)

ADDITIONAL PROVISION

Storage Media II-N

The Company shall deliver to the University, four (4) weeks prior to final acceptance of the System, complete material necessary to operate and maintain the System and all individual programs comprising the System. This material shall include all flow charts, print layouts, input, output and display formats, transaction code descriptions, user materials, test materials, reports, programs, systems manuals, tape listings, data, object decks, source listings and source decks, program packages and modifications thereof.

(Ma/NotD/72)

II. O. SUPERVISION

SAMPLE PROVISION

Supervision II-O

The provision of consulting services, research, advice and assistance by the CONSULTANT shall be subject to the general supervision and approval of the Provost-Director, acting for the DIVISION, in behalf of the Board of Trustees of State Colleges or to any duly appointed representative of the DIVISION.

CONSULTANT'S Personnel. The activities of the CONSULTANT shall be under the general direction of Dr. Jack B. Levine, principal of the Systems Research Group.

(SRG/MSCS/72)

ADDITIONAL PROVISION

Supervision II-O

The services provided by the Contractor to accomplish the Statement of Work shall be under the control, management, and supervision of the Contractor.

(X/Cal St U/73)

ADDITIONAL PROVISION

Supervision II-O

(Name of State person responsible) is responsible for ensuring the performance of the State personnel under this agreement, and is the State individual to whom all communications relative to this agreement will be addressed.

(X/Cal St U/73)

ADDITIONAL PROVISION

Supervision II-O

Project Managers:

The following individuals have been designated as project managers to carry out this project except for changes in dollars or time:

(Ma/NotD/72)

II. P. TAXES

SAMPLE PROVISION

Taxes II-P

The State shall pay to the Contractor any California State and local sales/use taxes on the personal services provided pursuant to this Agreement.

(X/Cal St U/73)

II. Q. TITLE

SAMPLE PROVISION

Title II-Q

The Company shall promptly and fully desclose to the University the product of the Company's work hereunder and, upon final payment to the Company, whether the amount in full, or in accordance with Section 9, such material shall be deemed to be work made for hire belonging exclusively to the University, with the University having the right to obtain and to hold in its own name copyrights, registrations or such other protection as may be appropriate to the subject matter, and any extension or renewals thereof. The Company agrees to render all reasonably required assistance to the University to perfect the rights hereinabove described during the term of this Agreement and for a period of one (1) month thereafter.

All written materials, including computer programs, card decks, tapes, listings and other documentation originated and prepared for the University by the Company pursuant to this Agreement, as well as the completed System, shall belong exclusively to the University. The Company agrees to safeguard the confidential nature of the completed System as well as all information furnished by the University in pursuit of the objectives of this Agreement.

The Company reserves the right to use the technical knowledge developed by the Company in the performance of this Agreement.

(Ma/NotD/72)

ADDITIONAL PROVISION

Title II-Q

All materials prepared by the CONSULTANT under this Contract, together with all materials and data furnished to the CONSULTANT by the DIVISION under the provisions of this Contract shall be delivered to the DIVISION office upon completion of the term of this contract as being the property of the DIVISION and the DIVISION shall not be limited in any way in its use thereof at any time. If the CONSULTANT desires to use any of the data prepared or furnished in connection with this PROJECT, he shall first obtain the written approval of the DIVISION.

(SRG/MSCS/72)

ADDITIONAL PROVISION

Title II-Q

All technical communications and records originated or prepared by the Contractor pursuant to this Agreement including papers, reports, charts, computer programs, and other documentation, but not including Contractor's administrative communications and records relating to this Agreement shall be delivered to and become the exclusive property of the State and may be copyrighted by the State.

The ideas, concepts, know-how, or techniques relating to data processing, developed during the course of this Agreement by the Contractor or jointly by the Contractor and the State can be used by either party in any way it may deem appropriate.

All inventions, discoveries, or improvements of the computer programs developed pursuant to this Agreement shall be the property of the State. The State agrees to grant a non-exclusive royalty-free license for any such invention, discovery, or improvement to the Contractor or any other such person may sub-license additional persons on the same royalty-free basis.

This Agreement shall not preclude the Contractor from developing materials outside this Agreement which are competitive, irrespective of their similarity to materials which might be delivered to the State pursuant to this Agreement.

(X/Cal St U/73)

ADDITIONAL PROVISION

Title II-Q

Ownership of software developed under this agreement shall remain the property of the Customer and shall not be copied or used in whole or in part, in printed or machine readable form, without prior written permission of the Customer. The Company agrees not to provide or otherwise make available any program or optional material, included but not limited to flow charts, logic diagrams and source code, in any form to any person other than the Customer without prior written permission.

(Y/UMich/74)

ADDITIONAL PROVISION

Title II-Q

SCT warrants and represents that it has good and merchantable title in the CUSTOM System Modifications being furnished to the State/DHE, and will at all times hereafter indemnify the State/DHE against any and all actions, proceedings, claims, damages, and demands by reason of the installation or use of the CUSTOM modifications.

(SCT/EIS/72)

II. R. TRAINING

SAMPLE PROVISION

Training II-R

SCT personnel, upon written authorization and work plan from DHE, will provide on-site consulting services to train DHE and/or their appointed representative in the use of the modified CUSTOM modules and to assist ECC and State College personnel in the installation of the CUSTOM Modules.

(SCT/EIS/72)

II. S. WARRANTY

SAMPLE PROVISION

Warranty II-S

The Company warrants that at the time of final acceptance of the System by the University the System will perform in accordance with the requirements set forth in the specifications contained in Appendix A hereto annexed. The Company agrees to correct promptly any defects or deficiencies of which the Company is notified by the University. The warranty period for the System, excepting year-end reports, will be from July 1, 1972 to October 31, 1972, or four months from final acceptance as described in Paragraph 10.3, whichever is later. The Company warrants the year-end reports from July 1, 1973 to August 31, 1973. Both warranty periods will take effect without any charge or expense to the Univeristy.

The Company warrants that in developing the System and its documentation the Company will not plagiarize work to which any other person has proprietary rights, to the end that the System and its documentation shall be an original and unique work, the delivery of which to the University and the subsequent use of which by the University shall not infringe any proprietary rights of any person to the knowledge of the Company.

(Ma/NotD/72)

SAMPLE REMEDY

Warranty II-S

If investigations of alleged deficiencies or defects discloses that they are not in fact within the requirements set forth in the aforesaid specifications, such investigative effort and any programming changes performed by the Company to correct such alleged deficiencies or defects will be charged to the University at the Company's hourly rate schedule then in existence plus expenses for travel and lodging. The remedy provided herein shall be exclusive of any other remedy available to the University at law or in equity.

(Ma/NotD/72)

ADDITIONAL REMEDY

Warranty II-S

Each program developed under this agreement will conform to the System Requirements Specifications when it is shipped to the Customer. The warranty period for the software shall be 1 year from the date of test and acceptance. When the Customer encounters a problem which is caused by a defect in the current release of the program, the Company will (1) if the program is inoperable, apply a program temporary fix or make an emergency by-pass and (2) make necessary corrections or modifications to the program at no charge for programming services. Program documentation will be provided on all such modifications at no charge to the Customer.

(Y/UMich/74)

SOURCES OF CONTRACT CLAUSES

Part 2: Custom Software

APPENDIX e

Sources of Contract Clauses: Part 2, Custom Software

INSTITUTION AND PURPOSE OF CONTRACT	ABBREVIATION
California State University model contract for development of custom software to define, to establish the responsibility for accomplishing and to prescribe payment for certain tasks relating to software.	(X/Cal St U/73)
Commonwealth of Massachusetts, Division of State Colleges, contract with the Systems Research Group for consulting services (An Information System Master Plan) to design and implement a total integrated information system to meet the requirements for academic, administrative and fiscal computing and data processing.	(SRG/MSCS/72)
Massachusetts State College Computer Network agreement with the Massachusetts Board of Higher Education to develop software to implement the state scholarship program.	(MSCCN/MBd.HE/73)
University of Michigan proposed considerations for the identification of and development of a software package and requirements.	(X/U Mich/74)
University of Michigan clauses for use with any vendor for development of custom software or purchase of packaged software.	(Y/UMich/74)
State of New Jersey, Department of Higher Education agreement with Systems and Computer Technology Corporation to furnish, install and use improvements to the Custom Student Information System (March 8, 1972)	(SCT/EIS/72)
University of Notre Dame of Notre Dame, Indiana Electronic Data Processing Services Agreement between the University and a software development Company to retain the Company to enhance the development and implementation of an automated Accounting System to enhance the computer services provided by the University to itself.	(Ma/NotD/72)